



MEMORANDUM

June 5, 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 DocuSigned by:
Katharine Petrucione
F7DF1CA0DB14A6...
Acting Executive Director

SUBJECT: Request approval of Opt-In Rent Deferral Program through December 31, 2020 and discussion of further tenant relief (Resolution No. 20-29)

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

This memorandum provides an overview of the Port's proposed Opt-In Rent Deferral Program and continues the dialogue on further tenant relief in response to the COVID-19 pandemic. Port staff would also like to update the Port Commission on 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.

Today staff seeks the following from the Port Commission:

- Approve the Opt-In Rent Deferral Program
- Feedback on the proposed further tenant relief

FOR ACTION – APPROVAL OF THE OPT-IN RENT DEFERRAL PROGRAM

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

THIS PRINT COVERS CALENDAR ITEM NO. 9A

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.
- Tenants must opt-in by the deadline of July 15, 2020.

This Opt-In Rent Deferral Program would apply to all leases, licenses and other agreements to use Port property. The program would not apply to MOUs with City departments, terminal agreements, 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). The program would also not apply to any agreements executed on or after April 1, 2020 or to any tenant claiming the benefit of force majeure or similar provisions in its lease.

Proposed Submittal Requirements for Opt-In Rent Deferral Program:

Tenants wishing to continue to defer rent payments will be required to submit the following information:

- Information from tenant to be submitted by July 15, which:
 - Describes impact from COVID-19 and need for relief.
 - Describes business plan to operate safely while COVID-19 is still circulating in the community.
 - Provides revenue projections from July - December in light of current economic conditions.
 - Using the revenue estimates above, projects anticipated cash flow that indicates whether the tenants can resume current rent payments on or before December 31, 2020.
- Documentation, to be submitted by July 15, 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.).
- Updated financial data to be submitted in mid-October

Program applicants may submit information through an online form (see Attachment B for a summary of the proposed form). Port staff intends to open the program on June 15 online with all information from tenants wishing to opt-in to the continued rent deferral due by July 15. Port staff will notify tenants through various outlets including email, social media, the website, and phone calls. Staff from the Real Estate &

Development, Maritime, Engineer, and Finance Divisions will be available to provide support to tenants through the application process and will also assist in the review of submitted information. The current broad-based rental deferral approved by the Port Commission on May 26, 2020 will expire on July 31 and be replaced by the Opt-In Program (see Attachment C for additional timeline information).

Estimated Total of Rent Deferred

Since the COVID-19 pandemic and Shelter in Place (SIP) orders began in March, Port staff have been working to analyze and understand the impact of the global public health crisis on Port operations. The charts below provide insights into the potential scale of the deferral program, specifically:

- Figure A shows the total potential rent the Port may be deferring through December 31, should all eligible tenants opt in to the Program and defer all rent (pay no rent for the remainder of the year). As shown, the total potential conservative estimate of “deferrable” rent is nearly \$36.6 million, which represent the total exposure. Port staff have calculated this number to show the Port’s potential exposure of deferrals but believe it is very unlikely that all tenants will defer all rent for 6 months, based on the last two months of rent collections.
- Figure B provides an overview of revenues deferred in April, and May. Based on these two months during the most restrictive SIP orders, the Port experienced an average payment rate of 47%. Assuming that this average payment rate continues through December 31st.
- Figure C provides a combination of the information in Figures A and C. Port staff estimate that of the approximately \$36.6 million of the total amount deferrable through the end of the calendar year. Port staff reasonably expects that \$15.2 million will continue to be paid as normal; the remaining \$21.4 million will be due on December 31st, unless the Port Commission takes subsequent action related to rent forgiveness or other measures.
- Table A is a summary of this data by Fiscal Year. Port staff presents this information based on the best data currently available and stresses that it is preliminary and likely to change given current economic volatility.

Port staff will provide the Port Commission with periodic updates on rent collections as they are processed and will update these projections accordingly.

Figure A – Total Rent Deferrable from March through December

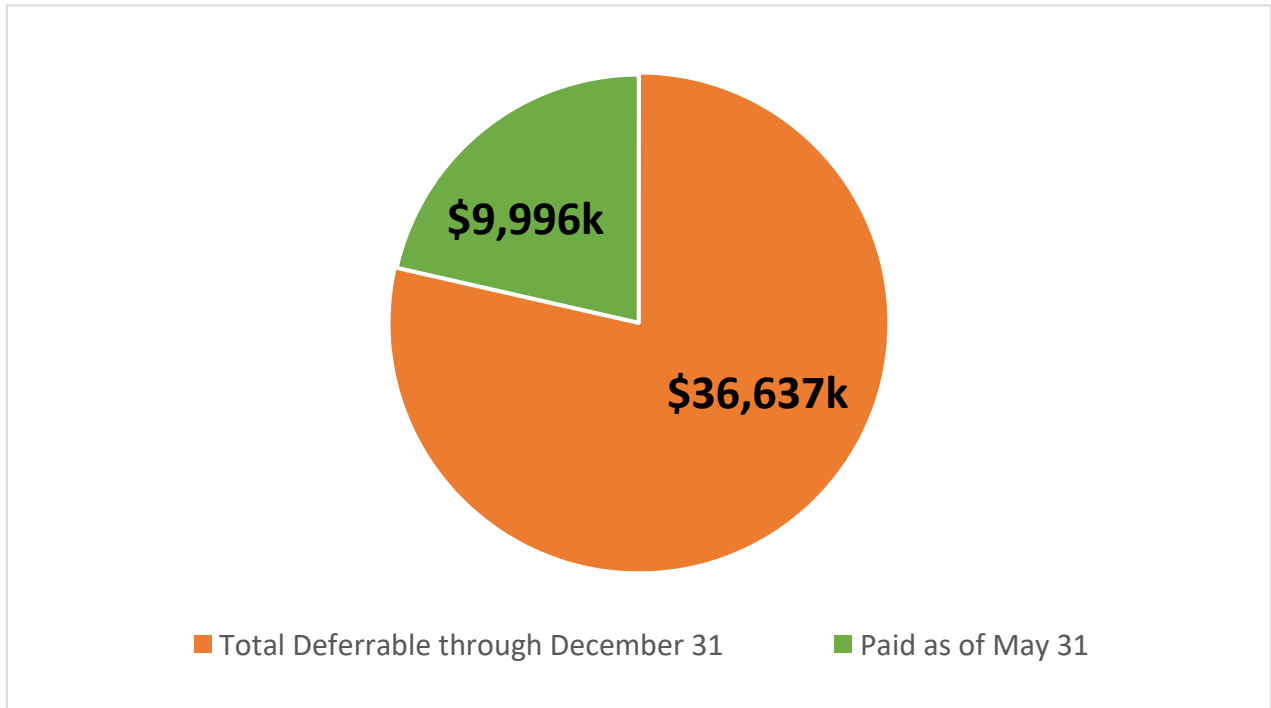


Figure B – Monthly Revenue Paid vs Unpaid

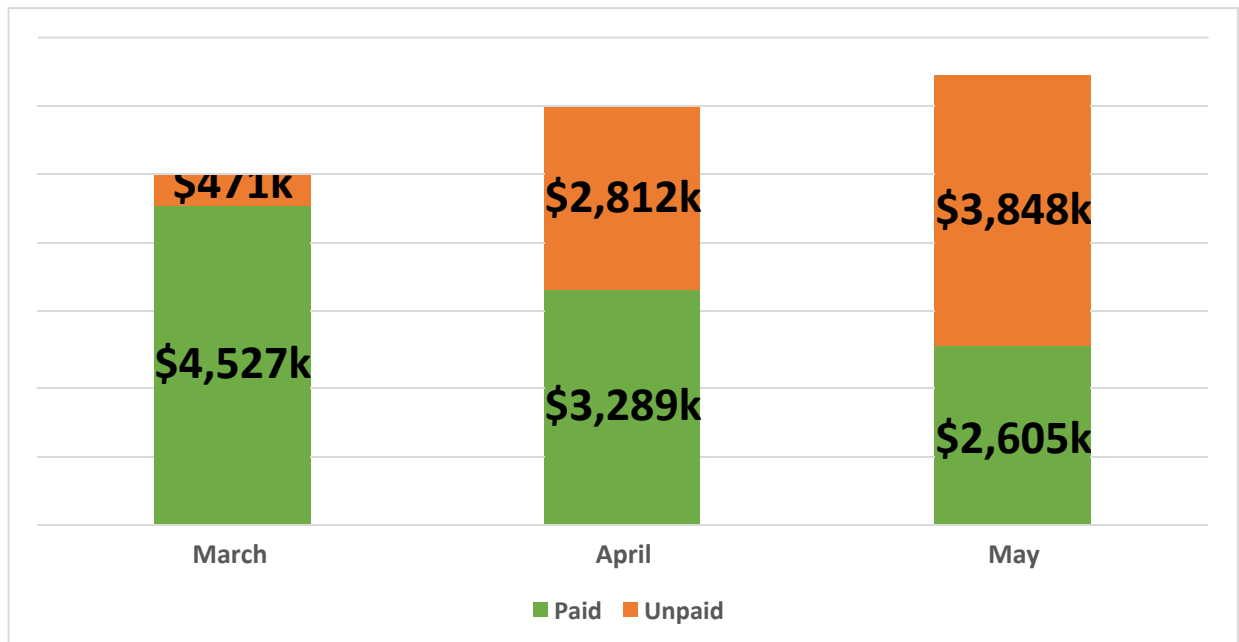


Figure C – Estimation of Payments to be Made During Deferral Period

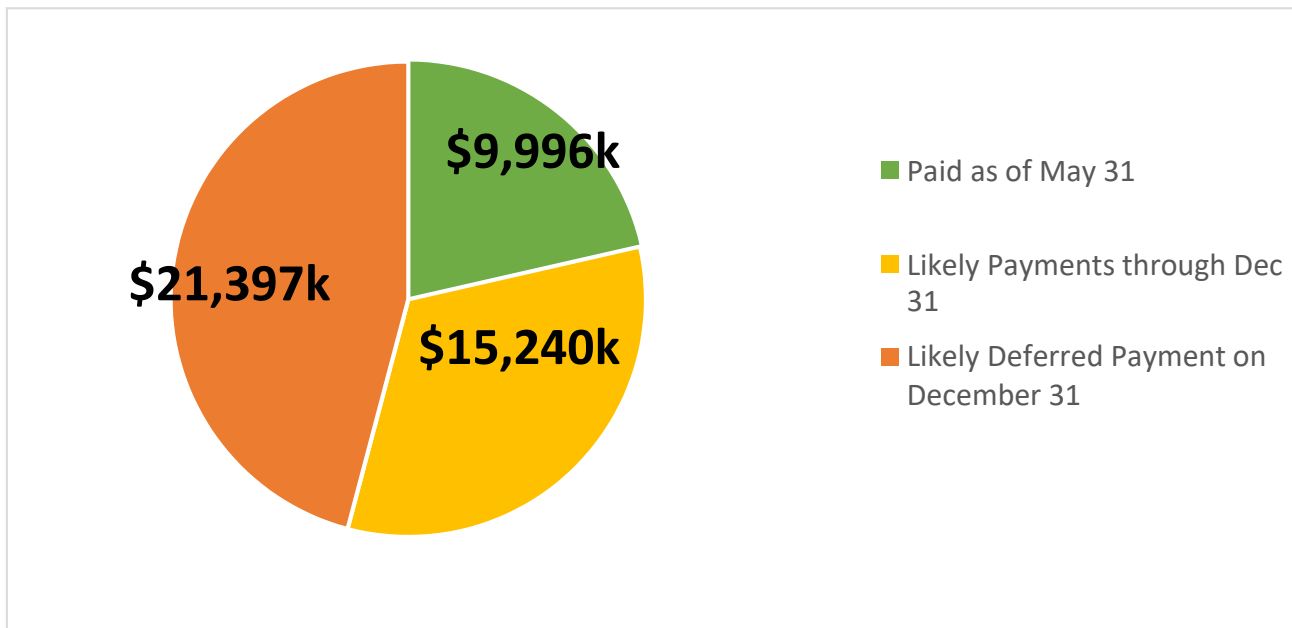


Table A – Exposure by Fiscal Year

	FY 2019 -20	FY 2020-21	Total
Total Rent Due	\$ 18,808,300	\$ 27,824,156	\$ 46,632,456
Payments Made	\$ 9,995,465	TBD	\$ 9,995,465
Total Exposure	\$ 8,812,835	\$ 27,824,156	\$ 36,636,991
Likely Payments	\$ 2,162,428	\$ 13,077,353	\$ 15,239,781
Likely Exposure	\$ 6,650,407	\$ 14,746,803	\$ 21,397,210

In summary, if all eligible tenants choose to opt-in to the extended deferral program, and also elect to defer all payments to December 31st, the Port must be prepared to absorb approximately \$36.6 million in total deferred rent, \$8.8 million in FY 2019-20 and \$27.8 million in FY 2020-21 (for more detail refer to Table A above). Staff proposes to use a combination of operating budget reductions, deferral of capital projects, use of fund balance, and defunding prior capital projects to stabilize the Port's budget through the end of the calendar year. However, based on the 47% average of payments made between April and May, which is presumably the most economically impacted period due to Shelter in Place restrictions, it is more likely that the Port's exposure is approximately \$21.4 million (\$6.7 million in FY 2019-20 and \$14.8 million). This figure does not take into account decreased revenues from tenants who may pursue mutual terminations or choose to vacate at the end of their lease term. Due to the uncertainty of

the market, these estimates will change as Port staff receive and process updated information.

Note that these figures are based solely upon Port staff's proposed Opt-In Deferral Program; should other legislation come into effect, such as Senate Bill 939,¹ Port staff will return to the Port Commission with an update and information about potential impacts to the Port's budget.

Staff Analysis of Proposed Opt-In Rent Deferral Program

The City's comprehensive response to the COVID-19 pandemic has had immediate and far-reaching effects on the economy and the Port's real estate portfolio. Businesses both on and off Port property are in a precarious position and struggling to maintain their operations. The Port's financial health is inextricably tied to its tenants' success. Port staff believes that providing support to tenants in the form of rent deferral will allow tenants to stabilize, adapt to the new normal and begin again to pay their rent.

Port staff recommends that any extended deferral program remain broadly targeted and easily accessible, and that qualification-based approaches be reserved for targeted forgiveness of rent beyond deferral. The proposed program 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. While there is logic in requiring a tenant to provide a business plan that demonstrates that it can begin current rent payments again at a future date, under the current operating uncertainty many tenants may have difficulty in developing credible projections. Additionally, 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 benefits the Port. 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 of the opt-in 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.

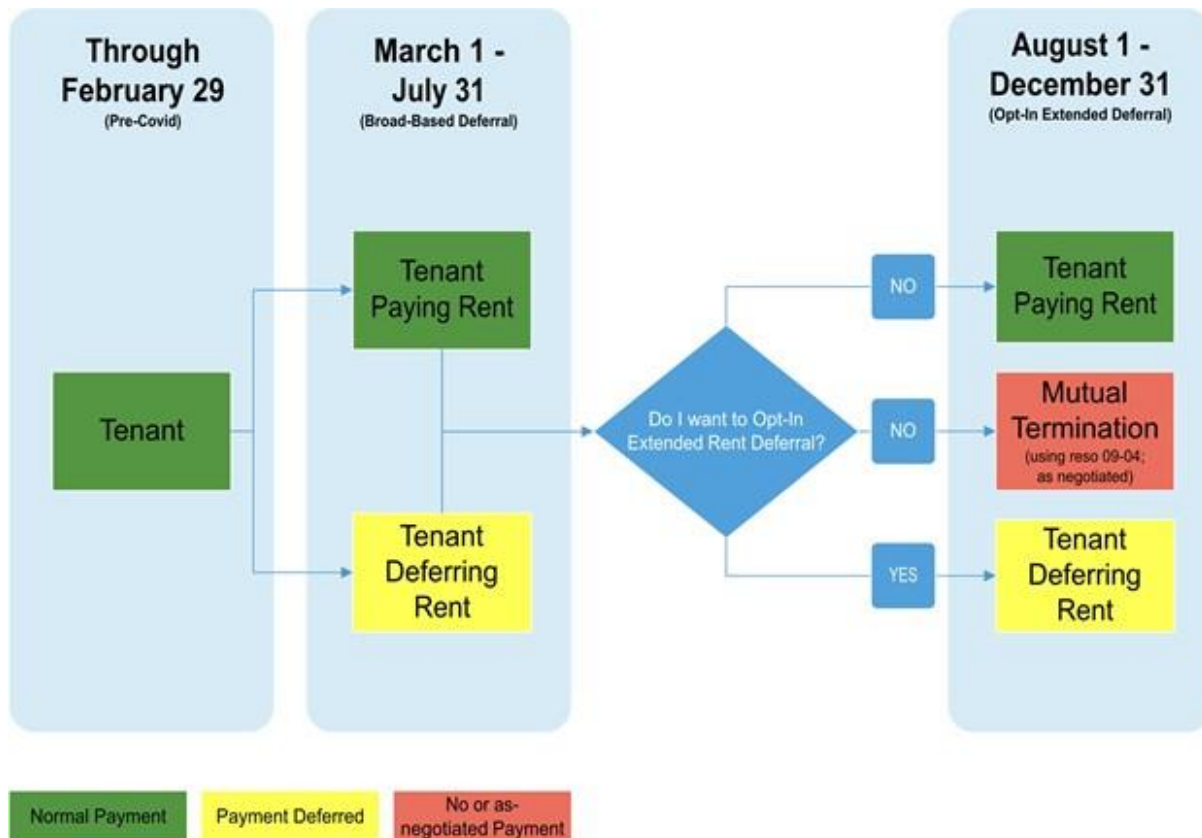
While public health guidance is working toward a reopening of the economy, the consumer response remains uncertain. Staff realizes that even with the desire and ability to reopen, there is no guarantee that a tenant will be able to generate enough revenue to pay the outstanding rent balance by a certain deadline. Despite these potential drawbacks, Port staff recommend the opt-in program approach.

¹Senate Bill 939, Weiner, Gonzales, proposes to give commercial tenants the right not to pay rent without fear of eviction for a full year after the current COVID-19 emergency ends.

Port staff also recommends requiring a mid-term updated financial report from tenants participating in the program. This information will indicate how the market is responding to the re-opening of the economy, and which businesses are succeeding or may need other interventions. This update would be due in mid-October, allowing staff to review the data and iterate relief measures as needed.

In 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, Port staff may utilize 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 negotiates 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 D below depicts Port staff’s proposed Opt-In Rent Deferral Program process flow.

FIGURE D – Opt-In Rent Deferral Program Process



With respect to other City efforts to provide tenant relief, the City Administrator recently updated the rent deferral policy applicable to General Fund departments (“City Administrator Memo”). Like the proposed Opt-In Deferral Policy, under the City Administrator Memo, rent is deferred through the end of the year and tenants must resume normal timely rent payments on January 1, 2021.

Where the proposed Opt-in Deferral program differs is that City Administrator Memo allows for the payment of any rent arrearages to be made in full no later than June 30, 2021. Any amounts not paid in full as of June 30, 2021 (or such later date as set forth under any subsequent relief program approved by the tenant’s City Landlord Agency) would then be subject to interest and penalties from and after that date.

At this point, other City landlord agencies have generally deferred rent through December 31st and are considering rent forgiveness programs.

FOR DISCUSSION – FURTHER TENANT RELIEF STRATEGIES & RELATED MATTERS

Port staff intends to return to the Port Commission in July or August to discuss further relief measures. These relief measures may include but are not limited to:

- A repayment plan option for outstanding deferred rent that cannot be paid by December 31st by tenants in the Opt-In Rent Deferral Program
- A Sector-based rent forgiveness program that may be targeted to the following tenant categories:
 - Percentage Rent Tenants (i.e., Restaurant, Retail, and Parking etc.)
 - Maritime Tenants (i.e., Excursions, Water Taxi Operators, and other Maritime Services)
- City-wide Efforts and Measures, including Board of Supervisors legislation
- Marketing Assistance by Port
- Grant Programs
- Streamlined Permitting for Shared Spaces, Outdoor Activation and similar programs
- State Programs and Legislation including SB 939

Port staff will utilize data submitted through the opt-in process and plans to provide data to support any additional relief measure proposed to the Port Commission. This data will highlight estimated rents by sector (base rent and historic percentage rent) and will summarize payment collection performance of rents by sector. Port staff hopes to provide aggregate revenue projections by tenant and provide initial thinking about the timeline for economic recovery and for the Port to stabilize its revenue portfolio.

Other Related Legislative Matters

As highlighted at previous Commission meetings, a lease amendment would be required in order to provide broader relief, such as rent forgiveness, restructured payment schedules, and lease extensions, to a tenant. 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 ten 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.

Additionally, State Senators Scott Weiner and Lena Gonzalez, have introduced State Bill 939, which proposes to give commercial tenants the right not to pay rent without fear of eviction for a full year after the current COVID-19 emergency ends. If passed, SB 939 will also eliminate late fees and make any "endeavor to evict a tenant of commercial real property" an unfair business practice. The new law would also permit commercial tenants to serve notices demanding their landlords renegotiate their leases "in good faith." If negotiations fail during a 30-day period, tenants could then terminate their remaining lease terms, and any associated "third-party guarantees," with no liability for the payment of future rent and a limit on the amount of back rent due. The Senate Judiciary Committee advanced the bill on Friday, May 22, and it will be heard in the Senate Appropriations Committee in June. The bill requires a 2/3 vote requirement, due to the bill's urgency clause, which would make it effective the moment it is signed into law by the Governor. If passed, this would require the Port to re-frame its rent relief efforts.

NEXT STEPS ON FURTHER TENANT RELIEF

Port staff intends to incorporate feedback at the meeting and return to the Port Commission as early as the July 14 meeting to continue the policy discussion on tenant assistance, rent relief, and local and state legislation that may affect the Port's relief strategies.

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 20-30
- Draft Online Form
- Draft Financial Projection Template
- Estimated Program Timeline

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

RESOLUTION NO. 20-30

- 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, Since that time, the Mayor and the Health Officer have regularly updated these orders in order to protect public health and re-open the economy; and
- WHEREAS, In response to these emergency measures and the severe impacts on Port's tenants, , 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 and extended the term of the Executive Directive through May 31, 2020 and, on May 26, 2020, by Resolution 20-27, the Port Commission again extended the term through July 31, 2020 (Extended Rent Deferral Policy"); and
- WHEREAS, The broad-based Extended Rent Deferral Policy provides a penalty-free offer to tenants to defer rent due for use of Port property in March through July 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, resuming

regular rent payments on August 1, 2020 and paying all deferred amounts by July 31 2020; and

WHEREAS, With a few specific exceptions as described in the policy, all Port tenants receive relief under the current Extended Rent Deferral Policy; and

WHEREAS, Public health guidance is working toward a reopening of the economy, but the consumer response remains uncertain and the Port Commission sees the need to provide further relief upon expiration of the current broad-based Extended Rent Deferral Policy on July 31, 2020; and

WHEREAS, The next step in Port's tenant relief efforts is an Opt-In Rent Deferral Program, as described in more detail in the Memorandum to the Port Commission dated June 5, 2020, which retains many of the key terms and exclusions of the current Extended Rent Deferral Policy and allows affected tenants that choose to participate through submittal of specified information by the deadline to continue to defer rent through December 31, 2020, such that payment of March through December 2020 rent may be deferred without financial or other penalty; provided that normal and timely payment of rent recommences on January 1, 2021; and

WHEREAS, Port staff will continue to monitor federal, state and local efforts on tenant relief and gather and analyze tenant revenue. and review Port's budgeting needs in order to determine and propose next steps; now therefore be it

RESOLVED, That the Port Commission approves the Opt-In Rent Deferral Program which defers rent for tenants that opt-in through December 31, 2020; and be it further

RESOLVED, That the Port Commission directs staff to promptly advise affected tenants of the Opt-In Rent Deferral Program, post notice on the Port website, and support tenants through the submittal process.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 9, 2020.

Secretary