

RESOLUTION 2013-85

**RESOLUTION AMENDING AND UPDATING BPC
(BOARD OF PORT COMMISSIONERS) POLICY NO.
355 REAL ESTATE LEASING POLICY AND
ADMINISTRATIVE PRACTICES – REAL ESTATE
LEASING TO MAKE THE FOLLOWING CHANGES:**

- A) STREAMLINE RENT REVIEW PROCESS;**
- B) ESTABLISH CRITERIA FOR CALCULATING
LEASE TERM EXTENSIONS;**
- C) REQUIRE TENANT TO INDEMNIFY DISTRICT
FOR LEGAL EXPENSES AND PAY ALL THIRD-
PARTY CONSULTANT COSTS; AND**
- D) ADMINISTRATIVE UPDATES**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, at the February 12, 2013 BPC meeting, the BPC adopted a resolution to establish Board Stakeholder Forums (Stakeholder Forums); and

WHEREAS, Stakeholder Forums are a venue for discussion between the District, its tenants and other stakeholders regarding real estate or other issues; and

WHEREAS, a publicly noticed Stakeholder Forum to discuss the proposed changes to BPC Policy No. 355 and its Administrative Practices – Real Estate Leasing (collectively, BPC Policy No. 355) was held on March 12, 2013 at the Port Administration Building; and

WHEREAS, approximately 35 Port tenants, stakeholders and other interested parties attended the event; and

WHEREAS, District staff gave a presentation that included background information on BPC Policy No. 355 and a discussion of the proposed changes to BPC Policy No. 355; and

WHEREAS, after the staff presentation, members of the audience made comments. A summary of the comments was delivered to the BPC in a memorandum dated March 15, 2013; and

WHEREAS, to avoid conflicts with any new cost recovery policy, ordinance or resolution, the following statement will be added to BPC Policy No. 355: "Fees and costs for services and administrative activities shall be paid in accordance with any applicable District ordinance."

WHEREAS, in order to streamline the rent review process, the following changes will be made to BPC Policy No. 355:

- Remove references to baseball arbitration in the rent review section and replace with baseball appraisal;
- Require that the District and tenants adhere to the timeframes provided in the lease or waive their right to utilize the baseball appraisal process;
- Prohibit rent reviews from considering concessions granted by the District at the inception of the lease; and

WHEREAS, BPC Policy No. 355 will be amended to state that market rent be established by averaging the previous 3 years of total percentage rent; and

WHEREAS, BPC Policy No. 355 will be amended to allow tenants to receive term extensions for projects submitted more than five years ago provided that all qualifying capital investment is submitted to the District for approval *in advance* of the project being counted for a lease term extension, the amount of capital eligible for lease term extension is codified in the project approval and the qualifying improvements are depreciated if they are more than five years old; and

WHEREAS, to establish tenant responsibility for indemnification and third-party costs related to processing of redevelopment projects, staff proposed the following changes will be made to BPC Policy No. 355:

- Require tenant to indemnify the District against all third-party challenges to the California Environmental Quality Act (CEQA) review and California Coastal Commission (CCC) determination;
- Require tenant to reimburse District for actual, reasonable and necessary third-party out-of-pocket expenses associated with processing a redevelopment project; and

WHEREAS, in reviewing BPC Policy No. 355, staff identified several areas of improvement that are categorized as an administrative update. The administrative changes to BPC Policy No. 355 include the following:

- Improved consistency with defined terms and other terminology;
- Annual CPI adjustments between 2 - 4% for flat rent tenants;
- Better description of project submittal requirements; and
- Proposals must be consistent with District's vision for property as determined by BPC rather than Port Master Plan to comport with standard District practice.

NOW THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That BPC Policy No. 355, Real Estate Leasing Policy and Administrative Practices – Real Estate Leasing, as amended, copies of which are on file in the Office of the District Clerk, are hereby adopted.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 7th day of May, 2013, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

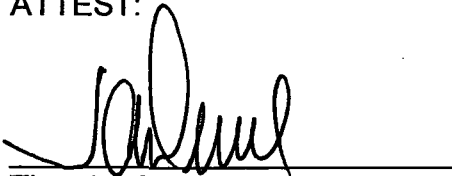
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)