

**RESOLUTION 2020-034**

**RESOLUTION ESTABLISHING TEMPORARY RENT DEFERRAL PROGRAM FOR QUALIFYING CONCESSION TENANTS ALLOWING A TEMPORARY SUSPENSION OF MINIMUM RENTAL PAYMENTS AND DIRECTION TO STAFF, AS NECESSARY**

**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**, as a result of the COVID-19 pandemic, many District tenants are experiencing a decline in their businesses or have been required to temporarily close their businesses, in whole or in part, to comply with (a) executive orders, including Executive Order N-33-20, (b) public health orders from the County of San Diego Public Health Officer, including prohibiting gatherings of 10 or more people and strongly discouraging non-essential gatherings of any size, and (c) all other applicable orders and directives associated with COVID-19; and

**WHEREAS**, the effects of the COVID-19 pandemic on the global economy and supply chains are impacting local companies due to a drastic reduction in tourism and COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

**WHEREAS**, due to the severity of the impacts to tenant businesses, and in response to a formal request by the San Diego Port Tenants Association (SDPTA) for rent relief in a letter dated March 20, 2020, staff has benchmarked and analyzed several approaches to provide rent relief to District tenants, while also ensuring that the District is able to meet its fiduciary and legal duties and its ability to be a self-sustaining agency; and

**WHEREAS**, through its research and analysis, staff has developed a temporary rent deferral program to assist tenants in sustaining economic viability through the COVID-19 public health crisis, which in turn will help the District continue to operate effectively and continuously during and after this pandemic; and

**WHEREAS**, the proposed program includes a three-month deferral of minimum rent for all concession tenants, including Seaport Village tenants and those tenants that report their gross sales to the District each month, to be paid

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back over a six-month period beginning in January 2021 with no interest or late charges; and

**WHEREAS**, for the three months (March, April, May), tenants would pay the percentage rent payments only on April 20, 2020, May 20, 2020, and June 20, 2020, with minimum rent deferred; and

**WHEREAS**, Seaport Village tenants would have the option to move the deferral back one month to February to help with immediate cash flow issues and would pay the percentage rent payments only on March 20, 2020, April 20, 2020, and May 20, 2020; and

**WHEREAS**, if no percentage rent is generated due to closures, no percentage rent would be paid that month; and

**WHEREAS**, the full amount of minimum rent for the three months would be deferred; and

**WHEREAS**, due to the ramp up time needed to implement the program, late fees would be waived for a period of up to 60 days for any tenant that qualifies; and

**WHEREAS**, tenants who may have already paid their March rent would not be refunded that payment; and

**WHEREAS**, repayment begins in January 2021 and would be divided evenly over the following six months; and

**WHEREAS**, no interest or late fees would be applied to the deferred amounts if they are paid in full during the six-month period; and

**WHEREAS**, the District reserves its right to pursue any and all remedies for any failure to pay rent pursuant to this program, including any rights that the District would have had at the commencement of the rent deferral program should the tenant not have qualified for the program; and

**WHEREAS**, a “concession tenant” is a tenant that pays the greater of minimum annual rent or percentage rent and reports their gross sales to the District each month; and

**WHEREAS**, the proposed program does not include a rent deferral for fixed rent tenants as currently proposed; and

**WHEREAS**, if every eligible tenant participates, the total impact in Fiscal Year 2020 could be up to approximately \$6.15 million in deferred rent to the District with approximately \$4.92 million attributed to concession tenants and an additional \$1.23 million attributed specifically to Seaport Village tenants; and

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**WHEREAS**, under the rent deferral program, these amounts should be paid back to the District by the end of Fiscal Year 2021; and

**WHEREAS**, the total impact to the District for rent deferred over Fiscal Year 2020 and Fiscal Year 2021 is approximately Two Hundred and Forty Thousand Dollars (\$240,0000), due to some anticipated vacancies at Seaport Village; and

**WHEREAS**, the balance of the deferral will be repaid under the rent deferral program and give the District tenants the temporary lifeline they need to navigate the public health crisis caused by COVID-19; and

**WHEREAS**, additionally, and as qualification for the program, tenants must be considered a tenant in good standing under Board of Port Commissioners (Board) Policy No. 355, at the time they apply and during the length of the program, and must apply for – and if received, accept – at least one federal or state aid program for which tenant qualifies established to mitigate the economic impacts of COVID-19; and

**WHEREAS**, supporting the financial stability of District tenants during this time of economic uncertainty is critical to the continued stability of the District itself, as the District depends on rents from the tenants to operate; and

**WHEREAS**, staff recommends that the Board authorize a resolution establishing a temporary rent deferral program for qualifying concession tenants allowing deferral of minimum rental payments based on the criteria set forth herein and give the Executive Director, or her designated representative, the authority to adopt administrative policies reasonably necessary to implement the rent deferral program, including without limitation, adopting definitions of “financial hardship” and developing any necessary procedures to review and process applications.

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

The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying concession tenants, including Seaport Village tenants and those tenants that report their gross sales to the District each month, allowing deferral of minimum rental payments (including Common Area Maintenance and marketing fees for Seaport Village tenants only) for a period of three months based on the minimum criteria set forth below and any administrative policies adopted by the Executive Director, or her designated representative:

**Minimum Conditions Applicable to All Concession Tenants, Including Seaport Village Tenants and Those Tenants that Report their Gross Sales to the District Each Month, Seeking Rent Deferral**

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To qualify for the proposed rent deferral program, the tenant shall meet all of the following minimum conditions:

- (1) Be considered a tenant in good standing pursuant to Board Policy No. 355 and remain a tenant in good standing throughout the program
  - a. Late fees to be waived for a period of 60 days from the date that rent was due to address non-payment of February rent. This would ensure that tenants who missed the February rental payment have an opportunity to address the missed payment without penalty and are still considered a tenant in good standing;
- (2) Provide evidence of financial hardship satisfactory to Executive Director in accordance with such procedures as the Executive Director may require;
- (3) Apply and provide proof of application for state and federal aid programs for which the tenant qualifies (unless the tenant does not qualify, in which case, a certified statement that the tenant does not qualify for the available programs);
- (4) Diligently pursue applications for state and federal aid, with acceptance into the rent deferral program contingent on tenant providing notice of determination;
- (5) Comply with any worker rehire policy adopted by the Board;
- (6) Acceptance into the rent deferral program would be contingent on tenant accepting state aid, federal aid, or both if offered; and,
- (7) All deferred rent must be repaid in full on or before July 20, 2021.

A "concession tenant" is a tenant that pays the greater of minimum annual rent or percentage rent and reports their gross sales to the District each month.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL



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By: Assistant/Deputy

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PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8<sup>th</sup> day of April 2020, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

*Chair Ann Moore*

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Ann Y. Moore, Chair  
Board of Port Commissioners

ATTEST:

*Donna Morales*

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Donna Morales  
District Clerk

