

**Subject:** Temporary Rent Deferral Program Rehire Policy

**Purpose:** To ensure an orderly, efficient, and fair process by which employees at District tenant premises return to work, allow tenants to resume operations quickly, and generate rent to fulfill the District's Public Trust mission by establishing employee rehire requirements for District tenants who choose to participate in the District's Temporary Rent Deferral Program.

1. Background

- a. On April 8, 2020, the Board of Port Commissioners (Board) adopted Resolution No. 2020-034, Resolution Establishing Temporary Rent Deferral Program for Qualifying Concession Tenants Allowing a Temporary Suspension of Minimum Rental Payments. As part of that Resolution, to qualify for rent deferral, among other requirements, a tenant must "[c]omply with any worker rehire policy adopted by the Board." This Policy No. \_\_\_\_\_ is the "worker rehire policy" to which Resolution No. 2020-034 refers.
- b. District tenants play an essential part in the District's promotion of its Public Trust mission and the rent the District receives from tenants supports the District's proprietary interests in generating revenue which the District then uses to fund its operations in support of its Public Trust mission.
- c. As a result of the COVID-19 pandemic, many District tenants are experiencing a decline in business at their lease premises or have been required to temporarily close, 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. Such closures and reductions in business have resulted in many tenants and other entities operating on the leased premises being forced to lay off or furlough certain employees who worked on or from District properties. It is important to the District that, when tenants and other entities operating on the leased premises begin to reopen, increase business, and hire and recall employees, tenants and others prioritize hiring those skilled, knowledgeable, and experienced employees who worked on or from District properties and were laid off, furloughed, or otherwise separated from active employment due to economic hardships resulting directly from COVID-19. This will benefit the District by ensuring an orderly,

efficient, and fair process by which such employees may return to work and allow tenants to resume operations quickly and generate rent to fulfill the District's Public Trust mission.

2. Any District tenant which participates in the Temporary Rent Deferral Program shall comply with the terms of this Policy and, as part of its written acceptance of the rent deferral, or as otherwise required by District staff, sign a representation and covenant to comply with this Policy.
3. The obligations of a tenant under this Policy shall continue until such time as that tenant has paid District all rent which has been deferred.
4. A "Covered Tenant" means a tenant which, on February 1, 2020, collectively between itself and any other entities operating on or from the lease premises, had 150 or more employees used to conduct operations on or from the lease premises who averaged 30 or more hours per week during the month of January 2020. The determination whether a tenant is a Covered Tenant shall be made separately for each lease. Within 14 days of accepting rent deferral or from adoption of this Policy, whichever is later, each tenant shall represent and covenant to District in writing whether it is a Covered Tenant. Such information shall be shared publicly shared with the Board.
5. Requirements for Covered Tenants
  - a. A Covered Tenant shall follow the Required Recall Procedures set forth below as to its direct employees used to conduct operations on or from the lease premises.
  - b. For any other entity operating on or from the lease premises which Covered Tenant has the ability to require to follow the Required Recall Procedures for such entity's employees used to conduct operations on or from the lease premises, Covered Tenant shall require such entity to follow the Required Recall Procedures for such entity's employees used to conduct operations on or from the lease premises.
  - c. For any other entity operating on or from the lease premises which a Covered Tenant does not have the ability to require such entity to follow the Required Recall Procedures, a Covered Tenant shall request and encourage such entity to agree to follow the Required Recall Procedures for such entity's employees used to conduct operations on or from the lease premises.
  - d. Within 14 days of accepting rent deferral or from adoption of this Policy, whichever is later, each Covered Tenant shall provide in

writing to District the following information which shall be shared publicly with the Board:

- i. A list of all entities operating on or from the lease premises which Covered Tenant has the ability to require to follow the Required Recall Procedures.
  - ii. A list of all entities operating on or from the lease premises which Covered Tenant does not have the ability to require to follow the Required Recall Procedures, represent and covenant that Covered Tenant has requested and encouraged such entities to agree to follow the Required Recall Procedures, and indicate whether each such entity has or has not agreed to do so.
- e. "Required Rehire Procedures" means, when an employer hires, rehires, recalls, or otherwise increases employees used to conduct operations on or from the lease premises, it shall offer employment to its former employees that were laid off, furloughed, or otherwise separated from active employment due directly to COVID-19-related circumstances who are qualified to perform the position being offered, in order of seniority with the employer. Offers of employment required above shall be made in writing, be sent to the employee at his or her last known address, shall provide clear instructions on the procedure for responding to the offer, and shall remain open for at least ten business days from the date of the offer. The employment offered may be under the terms and conditions established by the employer
6. Non-Covered Tenants. A tenant which is not a Covered Tenant is not required to comply with the procedure above but is encouraged by the Board to do so for its direct employees and to seek other entities operating from the lease premises to do so as well.
  7. If, after written notice of a tenant's alleged breach of a representation and covenant made in accordance with this Policy and/or this Policy, tenant fails to cure the breach or demonstrate to District's satisfaction that there has not been a breach within 14 days from such notice being sent then tenant's participation in the Temporary Rent Deferral Program shall automatically terminate, all deferred rent shall be immediately due and paid in full, tenant shall be ineligible for further COVID-19-related rent relief from District, and the occurrence of the breach and requirement to immediately pay deferred rent shall be publicly shared with the Board.