

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION ESTABLISHING TEMPORARY RENT DEFERRAL PROGRAM FOR QUALIFYING FIXED RENT TENANTS AND TARIFF FEE PAYING TENANTS ALLOWING A TEMPORARY SUSPENSION OF CERTAIN RENTAL AND TARIFF PAYMENTS WITH CONDITIONS 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, at the April 8, 2020 Special Meeting of the Board of Port Commissioners (BPC), the BPC adopted a Resolution establishing a temporary rent deferral program for qualifying concession rent paying tenants, tenants that report their gross sales to the District each month, and Seaport Village tenants (collectively, Concession Tenants) to assist them in sustaining economic viability through the COVID-19 public health crisis (Concession Tenant Rent Deferral Program); and

WHEREAS, staff has worked in partnership with the San Diego Port Tenants Association (SDPTA) to develop another program that would offer a temporary rent deferral for qualifying fixed rent tenants and tariff fee paying tenants experiencing financial hardship due to the public health crisis; and

WHEREAS, the proposed program allows for up to a three-month deferral of 50% of the fixed monthly rent for all fixed rent tenants, including those that pay both concession and fixed rent but excluding the San Diego International Airport, to be paid back over a six-month period beginning in January 2021 with no interest or late charges; and

WHEREAS, unlike the deferral offered to the Concession Tenants, the deferral period would be for up to three consecutive rental payment months between June and December 2020 (i.e., rental months of May through November); and

WHEREAS, a “fixed rent tenant” is a tenant that pays a fixed amount of rent to the District each month, which may be in the form of improvement rent or predetermined monthly amount of rent, and also includes some of the Concession Tenants who may pay a hybrid of concession rent and improvement rent for the rental of District owned improvements; and

WHEREAS, examples of fixed rent tenants are boatyards, easement holders (e.g., existing tenants, utilities, and other third parties), landscape tenants, marine tenants, pier

tenants, rental car tenants, tenant parking, and maritime tenants, but does not include the San Diego International Airport; and

WHEREAS, the economic impact of the proposed program to the District is expected to be felt mostly in late Fiscal Year 2020 (through June 30, 2020) and the first six months of Fiscal Year 2021, with all deferred amounts anticipated to be repaid by the end of Fiscal Year 2021; and

WHEREAS, if every eligible fixed rent tenant participates, the total impact in Fiscal Year 2020 could be up to approximately \$1,021,433 and an additional \$2,042,867 in deferred rent to the District in Fiscal Year 2021, for a total maximum deferral of \$3,064,300 to be repaid in Fiscal Year 2021; and

WHEREAS, to qualify for the deferral program, tenants must be considered a tenant in good standing under BPC Policy No. 355 (BPC 355) and must apply for – and if received, accept – state and federal aid under one or more programs established to mitigate the economic impacts of COVID-19; and

WHEREAS, even though most of the larger fixed rent tenants continue to operate at full capacity, and may not have endured financial hardship, staff wanted to make the option available to even the larger tenants, which as staff has seen with hotel tenants under the Concession Tenant Rent Deferral Program, may still be affected by the pandemic; and

WHEREAS, the proposed program would also offer qualifying tariff fee paying tenants the ability to pay tariff fees up to 30 days late with no interest or late fees during each of the tariff paying months of May through January for tariffs incurred during the months of April through December; and

WHEREAS, tariff fee paying tenants would include commercial fisherman who pay for marina slips at Tuna Harbor via tariff fees; and

WHEREAS, the District receives approximately \$1.18 million in tariff fees every month, which would be the monthly exposure to the District if all of the tariff fee paying tenants requested a deferral each month; and

WHEREAS, to qualify for this program, tariff fee paying tenants must be considered a tenant in good standing under BPC 355 and show evidence of delayed payment from manufacturers or suppliers or other evidence of financial hardship; and

WHEREAS, the estimated total impact for Fiscal Year 2020 and Fiscal Year 2021 is revenue neutral to the District, since the proposed program is a deferral of rent or tariffs only which would require that the rent or tariff be paid back in Fiscal Year 2020 or 2021; 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 as a self-sustaining agency; and

WHEREAS, if the BPC approves this temporary rent deferral program, the Executive Director would have full authority to implement it and no further BPC action would be required; and

WHEREAS, staff recommends that the BPC adopt a resolution establishing a temporary rent and tariff deferral program for qualifying fixed rent tenants and tariff fee paying tenants allowing deferral of minimum rent payments, in the case of qualifying fixed rent tenants, and deferral of tariffs in the case of tariff fee paying tenants, 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 temporary 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 that the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

- (A) The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying fixed rent tenants to allow a deferral of 50% of fixed monthly rent for up to three consecutive rental paying months between June through December 2020 to be paid back over a six-month period beginning in January 2021 with no interest or late fees 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 Fixed Rent Tenants Seeking Rent Deferral:

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

- (1) Be a fixed rent tenant, which means a tenant that pays fixed rent only, fixed rent and improvement rent, or a hybrid situation in which the tenant pays concession rent and improvement rent; and
- (2) Be considered a tenant in good standing pursuant to BPC Policy No. 355 and remain a tenant in good standing throughout the program; and
- (3) Provide evidence of financial hardship satisfactory to Executive Director, or her designated representative, in accordance with such procedures as the Executive Director, or her designated representative, may require, which could include evidence of delays from suppliers or manufacturers, full or partial shutdown, or decline in gross revenues; and
- (4) Apply and provide proof (or if proof is not available, a certification) 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); and
- (5) Diligently pursue applications for state and federal aid, with acceptance into the rent deferral program contingent on tenant providing notice of determination; and

- (6) Acceptance into the rent deferral program would be contingent on tenant accepting aid, federal aid, or both if offered; and
- (7) All deferred rent must be repaid in full on or before June 20, 2021.

(B) The Executive Director, or her designated representative, is hereby authorized to establish and implement a temporary rent deferral program for qualifying tariff fee paying tenants for a 30-day deferral period to submit monthly tariff payment with no late fees or interest for each of the tariff paying months of May 2020 through January 2021 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 Tariff Fee Paying Tenants Seeking Rent Deferral:

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

- (1) Be a tariff fee paying tenant, which means that the tenant pays a tariff to the District under an agreement, ordinance, or policy with the District; and
- (2) Be considered a tenant in good standing pursuant to BPC Policy No. 355 and remain a tenant in good standing throughout the program; and
- (3) Provide evidence of financial hardship satisfactory to Executive Director, or her designated representative, in accordance with such procedures as the Executive Director, or her designated representative, may require, which could include evidence of delays from suppliers or manufacturers, full or partial shutdown, or decline in gross revenues; and
- (4) All deferred tariffs must be repaid within the 30 day deferral period.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 19th day of May, 2020, by the following vote: