

BPC Policy No. 779

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. 779 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 leased 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, 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, collectively between itself and any other entities operating on or from the leased premises, had an average of 150 or more full or part-time, hourly or salaried employees used to conduct operations on or from the leased premises during the period January 1, 2019 through December 31, 2019. The determination whether a tenant is a Covered Tenant shall be made separately for each lease except where a single, integrated operation is subject to more than one lease, in which case the determination will be made for the integrated operation. Within 7 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. Further, any tenant who states it is not a Covered Tenant agrees to allow the District to inspect its employment and payroll records to confirm.
5. A "Covered Employee" means an hourly, non-managerial employee who was (1) laid off, furloughed, or otherwise separated from active employment after January 31, 2020 due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason, and (2) who, in the 90 days immediately prior, had worked for employer an average of 20 or more hours per week or had qualified for health care benefits with the employer.
6. Requirements for Covered Tenants
 - a. A Covered Tenant shall follow the Required Recall Procedures set forth below as to its direct Covered Employees used to conduct operations on or from the leased premises.
 - b. A Covered Tenant shall ensure that any other employer on the leased premises which meet both of the following criteria shall also follow the Required Recall Procedures set forth below as to its direct Covered Employees used to conduct operations on or from the leased premises:

- i. owns, controls, manages or operates the integrated operation of the leased premises, or any portion of the integrated operation of the leased premises; and
 - ii. had an average of 25 or more full or part-time, hourly or salaried employees used to conduct operations on or from the leased premises during the period January 1, 2019 through December 31, 2019.
- c. “Required Rehire Procedures” means, when an employer hires, rehires, recalls, or otherwise increases employees used to conduct operations on or from the leased premises, it shall offer employment to its Covered Employees who are qualified to perform the position being offered, in order of seniority with the employer. A Covered Employee is qualified for a position if the employee held the same or similar position at the leased premises at the time of the employee’s most recent separation from active service with the employer. Offers of employment required above shall be made via text message and/or email if the employer possesses such contact information, if not, in writing sent to the employee at his or her last known address. The offer shall provide clear instructions on the procedure for responding to the offer. The offer shall remain open for at least three days from the date of the offer unless the offer is explicitly declined by the employee sooner. The employment offered may be under the terms and conditions established by the employer. The Required Rehire Procedure shall not apply where the employer and a union or the employee or are parties to a collective bargaining agreement, recall agreement, severance agreement or separation agreement which addresses rehire, recall, or other return to work issues covered by the Required Rehire Procedure. In addition, the Required Rehire Procedures shall not apply to a Covered Employee who was permanently separated and paid severance.
- 7. 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 leased premises to do so as well.
- 8. The District shall accept written complaints alleging violations of this Policy from any affected employee or their bargaining representative. The District shall provide tenant with written notice of such complaints as well any allegations of violation raised by the District. The District shall have the right to audit compliance with all requirements of this Policy. Tenant shall have 14 days from such notice being sent to cure the breach or demonstrate to District’s satisfaction that there has not been a breach.

9. If after this 14-day period (1) tenant has failed to cure a breach or demonstrate to District's satisfaction that there has not been a breach, and (2) this results in tenant cumulatively not being in Substantial Compliance with this Policy, 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 pay district for its costs of any audit, 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. "Substantial Compliance" shall mean tenant (a) using its best efforts to comply, and (b) making at least 98% of offers of employment in compliance with this Policy to date.
10. Nothing in this Policy shall be construed as: (1) creating a cause of action against the District; (2) creating a cause of action by an employee or their bargaining representative against a tenant or any other entity operating on or from the leased premises; (3) affecting the rights of a party to a collective bargaining agreement, recall agreement, severance agreement, or separation agreement; or (4) affecting the rights of an employee or their bargaining representative or an employer under state, federal, and local laws.