

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION COMBINING AND MODIFYING THE
TEMPORARY RENT DEFERRAL PROGRAM FOR
QUALIFYING CONCESSION RENT TENANTS AND FIXED
RENT TENANTS INTO THE EXTENDED AND COMBINED
RENT DEFERRAL PROGRAM 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, as of June 13, 2020, 29 Concession Tenants have applied for the Concession Tenant Rent Deferral Program and 41 Concession Tenants have informed staff that they decline to participate; and

WHEREAS, Concession Tenants not participating in the program include marinas, yacht clubs, sportfishing landings and convention hotels, as many of these tenants have already met their minimum annual rent (MAR) for the year and therefore have no rent to defer, while others did not want to comply with the requirements to accept state and/or federal aid or they did not want to comply with the worker rehire policy; and

WHEREAS, at the May 19, 2020 BPC meeting, the BPC adopted a Resolution establishing a temporary rent deferral program for qualifying fixed rent paying tenants (Fixed Rent Tenants) and tariff fee paying tenants/customers similarly impacted by the effects of COVID-19 (Fixed Rent Tenant Rent Deferral Program); and

WHEREAS, as of June 13, 2020, only four Fixed Rent Tenants have applied for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, low participation in the Fixed Rent Tenant Rent Deferral Program may be due to the fact that Fixed Rent Tenants depend less on group and convention type business and tourism for their revenues and have therefore not been as impacted by the COVID-19 pandemic as the Concession Tenants, while others did not have a clear

understanding of, or had concerns with, the requirement to pass along the deferral to subtenants; and

WHEREAS, staff recommends the District continue to partner with its tenants to assist with their economic recovery as we move out of the closure phase of the pandemic and into the reopening phase; and

WHEREAS, to assist with reopening and to take some of the repayment pressure off the tenants, staff has met with tenants and the San Diego Port Tenants Association (SDPTA) to develop a recommendation that will promote economic recovery; and

WHEREAS, staff continues to monitor macroeconomic forecasts and trends as well as relying on industry publications for the latest information; and

WHEREAS, staff is also continuing to observe how similarly situated public agencies are responding to the pandemic and monitoring the types of aid that such public agencies are providing; and

WHEREAS, based on information gathered directly from tenants since March, as well as meetings with the SDPTA and staff's research, staff recommends several modifications to the original rent deferral programs in order to provide immediate and continuing relief to the District's tenants as well as assist them with the new costs associated with reopening during the various phases of the State and County orders; and

WHEREAS, staff proposes to amend the Concession Tenant Rent Deferral Program and Fixed Rent Tenant Rent Deferral Program, and combine the two programs, collectively referred to as, the "Extended and Combined Rent Deferral Program"; and

WHEREAS, for any tenant/customer who qualified under the current rent deferral programs, but does not qualify for, or elects not participate in, the Extended and Combined Rent Deferral Program, the tenant/customer would still be able to abide by the terms of its letter agreement with the District, as if the old rent deferral programs still existed; and

WHEREAS, a tariff fee paying tenants/customers would still be able to apply for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, the Extended and Combined Rent Deferral Program would allow up to six consecutive months of rents to be deferred, minimum rent for Concession Tenants and 50% for Fixed Rent Tenants, while the current programs only allow for three consecutive months; and

WHEREAS, for qualifying Concession Tenants, the Extended and Combined Rent Deferral Program would allow for the deferral of MAR for up to six months for the rent paying months of March to August 2020, for rent due on April 20, May 20, June 20, July 20, August 20, and September 20, 2020; and

WHEREAS, Concession Tenants who participated in the Concession Tenant Rent Deferral Program would be allowed to defer rents for the additional rent paying months of June, July and August 2020; and

WHEREAS, Concession Tenants who did not participate in the Concession Tenant Rent Deferral Program would receive an up to six month deferral of rent retroactive to March 2020; and

WHEREAS, for March, April, and May 2020 rents already paid by a Concession Tenant, the Concession Tenant would receive a rent credit for those months that would be applied to payment of rent starting the first month after the end of the deferral; and

WHEREAS, to demonstrate financial hardship under the Extended and Combined Rent Deferral Program, new applicants would need to show financial hardship in their operations for at least one month between March 2020 to August 2020; and

WHEREAS, for qualifying Fixed Rent Tenants, the Extended and Combined Rent Deferral Program would allow the deferral of fifty percent (50%) of the monthly rent for any six consecutive months for the rent paying months of June to December 2020, for rent due on June 1, July 1, August 1, September 1, October 1, November 1, December 1, 2020; and

WHEREAS, Fixed Rent Tenants who participated in the Fixed Rent Tenant Rent Deferral Program would be allowed to defer rents for three additional consecutive months from those selected previously by tenant provided such new three months do not go beyond December 31, 2020; and

WHEREAS, the additional months could be retroactive provided they are consecutive and not before June 2020; and

WHEREAS, Fixed Rent Tenants who did not participate in the Fixed Rent Tenant Rent Deferral Program, and paid rent for June, would receive a rent credit for the month of June and be able to defer a total of six consecutive months starting in June; and

WHEREAS, the June rent credit would be applied to next payment of rent after the deferral period ends; and

WHEREAS, the Extended and Combined Rent Deferral Program would extend repayment period for qualifying Concession Tenants by four months for a total of up to 10 months, consistent with the repayment period for the Fixed Rent Tenant Rent Deferral Program; and

WHEREAS, for qualifying Concession Tenants, the Extended and Combined Rent Deferral Program requires equal monthly installment repayments of the deferred MAR to commence by October 20, 2021 and conclude by July 20, 2022; and

WHEREAS, for qualifying Fixed Rent Tenants, the Extended and Combined Rent Deferral Program requires equal monthly installment repayments of the fixed rent and/or improvement rent to commence by October 1, 2021 and conclude by July 1, 2022; and

WHEREAS, the Extended and Combined Rent Deferral Program would clarify that a subtenant is a business operating under a short or long-term sublease with the master tenant that is consented to, or deemed consented to, or that the District was not required to consent to, and does not include telecommunication tenants; and

WHEREAS, the change to clarify the definition of subtenant would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program; and

WHEREAS, the Extended and Combined Rent Deferral Program would modify the requirement to pass down rent deferral benefits to the subtenants pro rata; and

WHEREAS, under the Extended and Combined Rent Deferral Program, the master tenant would be given the opportunity to determine how and if the rent deferral benefits should be passed down to its subtenants, including whether a subtenant would receive more of the benefit, less of the benefit, or none of the benefit, and in which of the rent deferred months such benefits would be received; and

WHEREAS, the master tenant would be required to provide staff with an economic justification for such changes, and the Executive Director, or her designated representative, would have the authority to determine compliance by the master tenant; and

WHEREAS, the changes to the subtenant requirement under the Extended and Combined Rent Deferral Program would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program; and

WHEREAS, tenants who have been accepted into and approved for the existing rent deferral programs, would not be required to resubmit a new application (which includes evidence of financial hardship and evidence of pursuit of state and federal aid) to receive the extended benefits of the Extended and Combined Rent Deferral Program; and

WHEREAS, tenants will only be required to notify staff of their request for the additional benefits so an amendment to their existing agreement can be processed to modify the rent deferral period, repayment term, and subtenant requirement; and

WHEREAS, Concession Tenants and Fixed Rent Tenants who chose not to apply, have not yet applied, or applied but did not complete the application process for the original programs will be invited to apply for the Extended and Combined Rent Deferral Program; and

WHEREAS, applications for tenants that are not already participating in one of the existing rent deferral programs will be accepted through August 31, 2020 for Concession

Tenants and December 31, 2020 for Fixed Rent Tenants and tenants will not be admitted into the Extended and Combined Rent Deferral Program after that time without future BPC action; and

WHEREAS, except as modified herein, all other qualifications and requirements of the Concession Tenant Rent Deferral Program and Fixed Rent Tenant Rent Deferral Program would remain in effect; and

WHEREAS, the proposed modifications to the current rent deferral programs would likely not benefit most Seaport Village tenants because most of the Seaport Village agreements are short term (5 years and less) and do not typically have the necessary remaining term for the tenant to repay under the rent deferral programs or permit the tenant enough time to properly recover from the economic impacts associated with the pandemic; and

WHEREAS, staff will address each Seaport Village lease individually, but may use the rent deferral programs adopted by the BPC as guidance in restructuring some of the leases; and

WHEREAS, because most of the Seaport Village tenants are on short-term leases of five years or less, staff has the ability to administratively modify the agreements as needed, and would only return to the BPC for approval of amendments and new leases if those agreements have a term greater than five (5) years; and

WHEREAS, the economic impact of the Extended and Combined Rent Deferral Program to the District, including six months of deferred rent for Concession Tenants and Fixed Rent Tenants, is expected to be felt mostly in late Fiscal Year 2020 (through June 30, 2020) and into Fiscal Year 2021, with all deferred amounts anticipated to be repaid by the end of Fiscal Year 2022; and

WHEREAS, if every eligible tenant participates (which is unlikely based on participation in the current programs), the total impact in Fiscal Year 2020 could be up to approximately \$6.3 million and an additional \$7.8 million in deferred rent to the District in Fiscal Year 2021, for a total maximum deferral of \$14.1 million to be repaid in Fiscal Year 2022; and

WHEREAS, based on the limited participation in the deferral programs to date, the actual amount of deferred rent is likely to be significantly less than \$14.1 million; 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, the Extended and Combined Rent Deferral Program would provide immediate rent relief to the tenants while delaying repayment until after summer 2021, typically the busy season for many tenants; and

WHEREAS, the proposed Extended and Combined Rent Deferral Program would allow tenants extended rent relief on favorable repayment terms to allow them to focus their capital today on reopening under the new operation requirements of the State and County orders and provide an economic buffer before repayment would begin; and

WHEREAS, in parallel, staff would continue to gather data as businesses begin to reopen and begin to target those tenants that may require more relief than the Extended and Combined Rent Deferral Program can offer to remain economically viable; and

WHEREAS, if the BPC approves the Extended and Combined 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 combining and modifying the Concession Tenant Rent Deferral Program and the Fixed Rent Tenant Rent Deferral Program into the Extended and Combined Rent Deferral Program to allow up to six months of rent deferral of certain rental payments, an extension of the repayment period, and clarifications to the requirement to pass down the deferral benefits to subtenants; and

WHEREAS, staff recommends that the BPC authorize the Executive Director, or her designated representative, to adopt any administrative policies deemed necessary to implement the Extended and Combined Rent Deferral Program.

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

The Executive Director, or her designated representative, is hereby authorized to combine the temporary rent deferral program for qualifying Concession Tenants adopted by the BPC on April 8, 2020 as Resolution 2020-034 (Concession Tenant Rent Deferral Program), and the temporary rent deferral program for Fixed Rent Tenants and tariff fee paying tenants/customers adopted by the BPC on May 19, 2020 as Resolution 2020-052 (Fixed Rent Tenant Rent Deferral Program) with the following modifications, which combined and modified program shall be known as the “Extended and Combined Rent Deferral Program”:

- **Rent Deferral Months – Up to Six Consecutive Months**
 - For qualifying Concession Tenants, defer minimum annual rent (MAR) for up to six months for the rent paying months of March to August 2020, for rent due on April 20, May 20, June 20, July 20, August 20, and September 20, 2020.
 - Concession Tenants who participated in the Concession Tenant Rent Deferral Program would be allowed to defer rents for the rent paying months of June, July and August 2020.
 - Concession Tenants who did not participate in the Concession Tenant Rent Deferral Program would receive an up to six month deferral of rent retroactive to March 2020. For March, April, and May rents already paid by a Concession Tenant, the Concession Tenant

- Modify the requirement to pass down rent deferral benefits to the subtenants pro rata.
 - Under the Extended and Combined Rent Deferral Program, master tenant would be given the opportunity to determine how and if the rent deferral benefits should be passed down to its subtenants, including whether a subtenant would receive more of the benefit, less of the benefit, or none of the benefit, and in which of the rent deferred months such benefits would be received. However, master tenant would be required to provide the Executive Director, or her designated representative, with an economic justification for such changes, and the Executive Director, or her designated representative, shall have the authority to determine compliance by the master tenant.
 - The changes to the subtenant requirement would only apply for new months granted to the tenants under the Extended and Combined Rent Deferral Program.

Any Concession Tenant that applies to the Extended and Combined Rent Deferral Program must still meet the requirements in the applicable Concession Tenant Rent Deferral Program that are not modified herein.

Any Fixed Rent Tenant that applies to the Extended and Combined Rent Deferral Program must still meet the requirements in the applicable Fixed Rent Tenant Rent Deferral Program that are not modified herein.

The Executive Director, or her designated representative, is hereby authorized to establish and implement the Extended and Combined Rent Deferral Program and adopt any administrative policies determined by the Executive Director, or her designated representative, to be necessary to implement the Extended and Combined Rent Deferral Program.

The Executive Director, or her designated representative, is hereby authorized to reconcile any conflicts that should arise between the Concession Tenant Rent Deferral Program and the Fixed Rent Tenant Rent Deferral Program, on the one hand, and the Extended and Combined Rent Deferral Program, on the other hand, as may be necessary to implement the Extended and Combined Rent Deferral Program, without any further action of the BPC.

For purposes of the Extended and Combined Rent Deferral Program, a “Concession Tenant” is defined as a tenant that pays the greater of minimum annual rent or percentage rent and reports their gross sales to the District each month, but excludes Seaport Village tenants.

For purposes of the Extended and Combined Rent Deferral Program, a “Fixed Rent Tenant” is defined as 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.

Applications for tenants that are not already participating in the Concession Tenant Rent Deferral Program or Fixed Rent Tenant Rent Deferral Program will be accepted through August 31, 2020 for Concession Tenants and December 31, 2020 for Fixed Rent Tenants. Tenants will not be admitted into the Extended and Combined Rent Deferral Program after that time without future BPC action.

For any tenant/customer who qualified under the Concession Tenant Rent Deferral Program and/or the Fixed Rent Tenant Rent Deferral Program, but does not qualify for, or elects not to participate in, the Extended and Combined Rent Deferral Program, the tenant/customer would still be able to abide by the terms of its letter agreement with the District, as if the old rent deferral programs still existed.

Tariff fee paying tenants/customers may still apply for the Fixed Rent Tenant Rent Deferral Program in accordance with Resolution 2020-052.

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 23rd day of June, 2020, by the following vote: