



## Legislation Details (With Text)

**File #:** 2020-0218    **Version:** 1    **Name:**

**Type:** Action Item    **Status:** Passed

**File created:** 6/8/2020    **In control:** Board of Port Commissioners

**On agenda:** 6/23/2020    **Final action:** 6/23/2020

**Title:** ORDINANCE GRANTING AMENDMENT NO. 2 TO LEASE WITH SEAPORT ENTERTAINMENT, LLC TO MODIFY THE RENT PROVISIONS OF THE LEASE INCLUDING EXTENDING THE RENT COMMENCEMENT PERIOD FROM JULY 1, 2020 TO MAY 1, 2021 FOR A PROPOSED FULL-SERVICE RESTAURANT LOCATED AT SEAPORT VILLAGE AT 849 W. HARBOR DRIVE, SUITE E3, IN SAN DIEGO

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 9. 2020-0218 Attachment A, 2. 9. 2020-0218 Attachment B, 3. 9. 2020-0218 Draft Ordinance

Date	Ver.	Action By	Action	Result
6/23/2020	1	Board of Port Commissioners	adopted	

**DATE:** June 23, 2020

**SUBJECT:**

**ORDINANCE GRANTING AMENDMENT NO. 2 TO LEASE WITH SEAPORT ENTERTAINMENT, LLC TO MODIFY THE RENT PROVISIONS OF THE LEASE INCLUDING EXTENDING THE RENT COMMENCEMENT PERIOD FROM JULY 1, 2020 TO MAY 1, 2021 FOR A PROPOSED FULL-SERVICE RESTAURANT LOCATED AT SEAPORT VILLAGE AT 849 W. HARBOR DRIVE, SUITE E3, IN SAN DIEGO**

**EXECUTIVE SUMMARY:**

Background

At its January 2, 2019 meeting, the Board adopted an ordinance granting a 10-year lease with one 5-year option to extend for a total term of 15 years with Seaport Entertainment, LLC (Tenant), for a full-service restaurant and bar with a “Sam the Cooking Guy” branded concept in Seaport Village (Attachment A).

As a result of the impacts from COVID-19 related to the hospitality and tourism industry, and in response to a request by Tenant, staff is proposing an amendment to update some of the business terms of the existing lease. Staff has come to an agreement on reasonable modifications to the business terms of the lease that would support a later opening of the restaurant and minimize the risk of adding additional vacancy at Seaport Village and continue to meet its leasing goals. The proposed amendment would enable the District to retain an important new anchor tenant for Seaport Village which will activate the Lighthouse District, draw locals and visitors to the shopping center and catalyze leasing activity throughout Seaport Village.

Prior to the COVID-19 pandemic, the District made great strides in securing a quality tenant which would help attract more visitors and move one step closer to reinventing Seaport Village and repositioning it for the future. Supporting the financial stability of tenants during this time of economic uncertainty is critical to the continued stability of Seaport Village and the District itself. For these reasons staff recommends adopting an ordinance granting Amendment No. 2 to the lease with Seaport Entertainment, LLC.

### **RECOMMENDATION:**

Adopt an Ordinance Granting Amendment No. 2 to Seaport Entertainment, LLC to Modify the Rent Provisions of the Lease and Including Extending the Rent Commencement Period from July 1, 2020 to May 1, 2021 for a Proposed Full-Service Restaurant Located at Seaport Village located at 849 W. Harbor Drive, Suite E3 in San Diego.

### **FISCAL IMPACT:**

If this ordinance is adopted, staff anticipates a cumulative cash flow to the District of approximately \$1,860,977 in rent over the 10-year term of this lease. Incorporating all the cash inflows and outflows, staff estimates a 10-year Internal Rate of Return (IRR) of 35% and a Net Present Value (NPV) of \$1,005,814 (using an 8% discount rate).

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### Background

At the January 2, 2019 meeting, the Board adopted an ordinance granting a 10-year lease with one 5-year option to extend for a total term of 15 years with San Diego-based hospitality group Grain & Grit Collective, operating as Seaport Entertainment, LLC, for a full-service restaurant and bar with a “Sam the Cooking Guy” branded concept in the two-story, 6,600 square foot Suite E-3 with non-exclusive use of the Lighthouse Common Area Courtyard of Seaport Village.

As the owners and operators of Carnitas Snack Shack, LLC, The Broken Yolk Café, and the Little Italy Food Hall, Grain & Grit Collective brings a wealth of experience with proven success to Seaport Village.

Under the original terms of the Lease, it was contemplated that the restaurant would be open by and rent would commence starting July 1, 2020. The tenant was preparing to take possession of the leasehold and in a position to move forward with obtaining permits when the COVID-19 stay-at-home

order was issued. Consistent with the applicable orders, the District reduced the minimum operating hours at Seaport Village to zero hours. However, as a result of the orders, tourism and traffic at Seaport Village reduced significantly. As a result, and to respond to the impact of COVID-19, Grain & Grit Collective requested that the District amend the lease to extend the timelines for obtaining permits, opening to the public, and the commencement of rent.

### Proposed Amendment to Lease

As a result of the impacts related to the hospitality and tourism industry, and in response to a request by the Tenant, staff is proposing an amendment to update some of the business terms of the existing lease. Under the existing Lease as amended, the tenant can terminate before June 30, 2020. The Tenant has indicated that the Lease terms are no longer feasible, and they would be forced to terminate the Lease without modifications to the deal terms.

Staff has worked diligently with the Tenant to come to an agreement on reasonable modifications to the business terms of the Lease that would support a later opening of the restaurant and minimize the risk of increased vacancy at Seaport Village. This amendment would allow the District to continue to meet its leasing goals despite the delay and retain an important new anchor tenant for Seaport Village.

Under Amendment No. 2 (Attachment B), the rent would commence May 1, 2021 (at that latest) versus July 1, 2020 as contemplated under the existing lease. This modification provides the Tenant with additional time to complete design plans, obtain all the appropriate permits and finalize their improvement plans. The proposed amendment also includes a provision which would allow interim operations prior to May 1, 2021 (for example operations of the common area patio) through a separate agreement only if it is in the mutual interest of the District and the Tenant and provides a potential opportunity to generate on-premise sales revenue in the interim period prior to the full concept opening to the public. To provide some flexibility, Amendment No. 2 includes a modified percentage rent in the first year of operations and only applies if sales fall below \$4 million. This gives the Tenant the ability to stabilize given the uncertainty of the hospitality and tourism sectors. The Tenant remains committed to moving forward with the proposed restaurant concept and the proposed Amendment No. 2 will provide some relief to the Tenant while they continue to plan for the restaurant opening. Further, the modifications are such that the District is projected to receive the revenues projected under the original Lease terms.

The table below outlines the terms under the existing Lease and those proposed under the amendment:

Lease Terms	Existing Lease	Proposed Amendment
Square Footage	6,600	6,600
Lease Term	10 Years	10 Years
Lease Extensions/Options	One 5-Year Option	One 5-Year Option
<b>Rent Commencement</b>	July 1, 2020	May 1, 2021
Minimum Annual Rent	\$135,960	\$135,960
Percentage Rent	6% Gross Revenue	6% Gross Revenue
<b>Modified Percentage Rent (Year 1 Only)</b>	None	8% Gross Revenue (MAR, Percentage + NNN) if sales below \$4M
Sales Projection	\$5.25M	\$4M
Breakpoint	\$4M (w/3% increase)	\$4M (w/3% increase)
TI Allowance	\$600k	\$600k
Termination Right	After YR 5/\$328k	After YR 5/\$328k
5-Yr/7-Yr/10-Yr IRR	15%/23%/28%	23%/31%/35%

Note: (a) Tenant is not precluded from opening prior to May 1, 2021. The rent commencement date would begin upon Tenant's opening for business, but not later than May 1, 2021. (b) "Sales Projections" noted above are only in Lease Year 1.

**Conclusion**

Prior to the COVID-19 pandemic, the District made great strides in securing a quality anchor tenant which would help attract more visitors and move one step closer to reinventing Seaport Village and repositioning it for the future. Partnering with Seaport Entertainment, LLC continues to provide an opportunity to not only transform and enhance the user experience with an innovative concept branded by "Sam the Cooking Guy" for locals and visitors alike, but to also catalyze leasing activity throughout Seaport Village. For these reasons staff recommends adopting an ordinance granting Amendment No. 2 to the Lease with Seaport Entertainment, LLC.

**General Counsel's Comments:**

The General Counsel's Office has reviewed the agenda sheet and attachments, as presented to it, and approves them as to form and legality.

**Environmental Review:**

The proposed Board action, including without limitation, an ordinance granting an amendment to modify rent provision extending the latest rent commencement from July 1, 2020 to May 1, 2021 and

making other minor changes to an existing lease, is Categorical Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities) and Section 3.a. of the District's Guidelines for Compliance with CEQA because the project in question would involve no expansion of use beyond that previously existing. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). CEQA Exemptions were previously issued for the project on August 9, 2018 and on October 30, 2019. The proposed project is consistent with the project analyzed in those Categorical Determinations. The proposed Board action is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the proposed Board action is merely a step-in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

The proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions; to do all acts necessary and convenient for the exercise of its powers; and authorizes the use of tidelands for all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations.

**Equal Opportunity Program:**

N/A

**PREPARED BY:**

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**Attachment(s):**

- Attachment A: Seaport Village Site Map and Proposed Premises Map
- Attachment B: Amendment No. 2 to Lease