



## Legislation Details (With Text)

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**Type:** Action Item    **Status:** Passed  
**File created:** 8/28/2020    **In control:** Board of Port Commissioners  
**On agenda:** 10/9/2020    **Final action:** 10/9/2020  
**Title:** A) ORDINANCE GRANTING A LEASE TO MALIBU FARM SEAPORT VILLAGE INC. DBA MALIBU FARM FOR A FIRST-CLASS FULL-SERVICE RESTAURANT AT SEAPORT VILLAGE LOCATED AT 831 W. HARBOR DR., (SUITE C1) IN SAN DIEGO FOR A 10-YEAR TERM PLUS ONE 5-YEAR OPTION (FOR A TOTAL POTENTIAL TERM OF 15 YEARS)  
B) RESOLUTION AUTHORIZING AMENDMENT NO. 3 TO THE AGREEMENT WITH R.I. PROPERTIES, INC., DBA RETAIL INSITE (RETAIL INSITE) FOR COMMERCIAL REAL ESTATE BROKER SERVICES FOR SEAPORT VILLAGE TO AMEND THE ANNUAL MAXIMUM EXPENDITURE, PAYMENT PROCEDURE OF COMMISSIONS, AND COMPENSATION STRUCTURE, AND WAIVING BOARD OF PORT COMMISSIONERS POLICY NO. 114 PAYMENT OF COMMISSIONS FOR THE LEASING OF TIDELANDS

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 18. 2020-0331 Attachment A, 2. 18. 2020-0331 Attachment B, 3. 18. 2020-0331 Attachment C, 4. 18. 2020-0331 Attachment D, 5. 18. 2020-0331A Draft Ordinance, 6. 18. 2020-0331B Draft Resolution

Date	Ver.	Action By	Action	Result
10/9/2020	1	Board of Port Commissioners	adopted	Pass
10/6/2020	1	Board of Port Commissioners		

**DATE:** October 6, 2020

**SUBJECT:**

- A) ORDINANCE GRANTING A LEASE TO MALIBU FARM SEAPORT VILLAGE INC. DBA MALIBU FARM FOR A FIRST-CLASS FULL-SERVICE RESTAURANT AT SEAPORT VILLAGE LOCATED AT 831 W. HARBOR DR., (SUITE C1) IN SAN DIEGO FOR A 10-YEAR TERM PLUS ONE 5-YEAR OPTION (FOR A TOTAL POTENTIAL TERM OF 15 YEARS)  
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### EXECUTIVE SUMMARY:

Seaport Village is a tourist-oriented retail shopping center consisting of approximately 90,000 square feet of specialty retailers, restaurants, outdoor entertainment and parking on an approximately 14-

acre bayfront site located at 849 West Harbor Drive in San Diego, California (Attachment A). On October 1, 2018, the District assumed ownership of the Seaport Village assets, which consist of 32 buildings, including one over-water structure. Since then, the District has made strategic operational and financial investments to improve the overall experience and success of the shopping center for both locals and visitors alike. An essential component to this success is the District's ability to secure tenancies quickly to increase occupancy, attract additional foot traffic and generate higher revenue to the District. As a result, one of staff's primary objectives has been to fill the existing vacancies at Seaport Village with new-high caliber tenants with Public Trust compliant uses.

Since assuming ownership of the Seaport Village assets, the District has successfully filled 14 spaces with a variety of uses including specialty retail, full-service and fast-casual restaurants, walk-up cafés and a specialty market, among other new and exciting offerings. With the ever-increasing market demand for space at Seaport Village, the District's broker, Retail Insite continues to present the District with highly competitive letters of intent (LOI) from extraordinary prospective tenants. Today, staff seeks the Board of Port Commissioner's (Board) approval of an ordinance granting a lease to Malibu Farm Seaport Village Inc. (Malibu Farm), an iconic and transformative first-class restaurant operator with a local and international presence. Malibu Farm would anchor Seaport Village as a high performing, innovative food & beverage operator with proven success and attract additional foot traffic as a new restaurant destination for both locals and visitors alike. A proposed long-term lease with Malibu Farm would provide the District with an opportunity to create a valued partnership with a highly sought-after operator that would build momentum, continue to catalyze leasing activity and achieve the District's overall objectives for Seaport Village.

This lease is projected to generate \$5.8M in cumulative rent over a 10-year term, a highly competitive internal rate of return (IRR) to the District of 24% with a net present value (NPV) of \$2.7M. Consistent with past Board feedback to staff, the proposed lease includes a termination provision which would enable the District to terminate the lease from and after the fifth lease year in the event of future redevelopment of the Central Embarcadero. The proposed lease also includes up to a \$2.8M tenant improvement (TI) allowance that must be paid by the District in the second or third quarter of Fiscal Year (FY) 2022 and would be budgeted in the FY 2022 budget. Payments due under this proposed lease are not projected to impact the District's FY 2021 budget.

To support the District's leasing initiatives at Seaport Village and to provide for commissions on the proposed lease with Malibu Farm, staff is also seeking Board approval of Amendment No. 3 to the Agreement between the District and Retail Insite for Real Estate Broker Services (Retail Insite Agreement)<sup>1</sup>. When the Retail Insite Agreement was approved by the Board in 2018, it did not contemplate commissions for leases in excess of five years or construction of tenant improvements that would be reimbursed by the District. Consistent with the District's leasing strategy to consider longer lease terms and creative deal structures involving tenant improvements to attract and secure leases with high caliber tenants, staff is seeking Board approval of Amendment No. 3 to the Retail Insite Agreement. The proposed amendment would eliminate the annual maximum expenditure (currently capped at \$200,000 per year), amend the payment procedure/timing of commissions, and revise the compensation structure, to provide for commissions when Retail Insite provides substantial advisory services, as determined by the District. The amendment will provide for commissions on the lease with Malibu Farm and support the District's leasing initiatives overall at Seaport Village. Anticipated broker commissions of approximately \$281,736 will be due for the Malibu Farm lease in FY 2022. Please see Attachment B - Amendment No. 3 to the Retail Insite Agreement (Amendment No. 3).

As more fully discussed below, staff recommends the Board adopt the ordinance granting a lease to Malibu Farm and Amendment No. 3 to the Retail Insite Agreement.

### **RECOMMENDATION:**

- A) Adopt an Ordinance Granting a Lease to Malibu Farm Seaport Village Inc. dba Malibu Farm for a First-Class Full-Service Restaurant at Seaport Village Located at 831 W. Harbor Dr., (Suite C1) in San Diego for a 10-Year Term Plus One 5-Year Option (For a Total Potential Term of 15 Years)
- B) Adopt a Resolution Authorizing Amendment No. 3 to the Agreement with R.I. Properties, Inc., dba Retail Insite for Commercial Real Estate Broker Services for Seaport Village to Amend the Annual Maximum Expenditure, Payment Procedure of Commissions, and Compensation Structure, and Waiving Board Of Port Commissioners Policy No. 114 Payment of Commissions for the Leasing of Tidelands

### **FISCAL IMPACT:**

Adopting this ordinance granting a lease to Malibu Farm will have a positive fiscal impact to the District, as staff anticipates approximately \$5.8M in cumulative rent over the 10-year term of the lease, a 24% IRR and an NPV of \$2.7M (using an 8% discount rate). If the lease with Malibu Farm is approved, the District would incur cash outflows for broker commissions in the amount of approximately \$281,736 and TI allowance in an amount up to \$2.8M. Due to the lease structure and Malibu Farm's expected construction timeline, staff anticipates that broker commissions and the TI allowance would be paid out by the District in the second or third quarter of FY 2022 and, as a result, would be budgeted in FY 2022's budget. Therefore, any cash outflows incurred by the District as a result of this lease would not impact the District's FY 2021 budget constraints associated with the COVID-19 pandemic. Please see Attachment C for the economic terms and projections of the lease.

### **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 with a healthy and sustainable bay and its environment.
- 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:**

Over the past two years, the District has successfully achieved its objectives of securing high-caliber, catalyst tenants to increase occupancy, generate greater momentum for the shopping center and secure higher revenue to the District. Currently, the District has lease agreements in place with 60 tenants at Seaport Village and approximately 9 vacancies which are concentrated in the Lighthouse District on the east side of the shopping center. The current tenant mix is comprised of 43 retail tenants and 17 food and beverage tenants. The District's success to date in filling vacancies at Seaport Village has generated significant interest and increased market demand for space at the shopping center. Despite recent impacts to the retail market and overall economy from the COVID-19

pandemic, the District has successfully filled three vacancies with specialty retailers and a fast-casual restaurant. Retail Insite continues to present staff with highly competitive LOIs from remarkable prospective tenants for market rate leases as is consistent with the District's leasing strategy.

### *Proposed Lease with Malibu Farm*

Today, staff seeks the Board's approval of an ordinance granting a lease to Malibu Farm, an iconic and transformative first-class restaurant operator with a local and international presence for a 10-year term plus one 5-year option to extend (please see Attachment A for a location map of the space).

### *Malibu Farm - Suite C1*

As a highly experienced and innovative operator with proven success, Malibu Farm currently operates two restaurants at the Malibu Pier, one at Lido Marina Village in Newport Beach, California, and has five licensed locations throughout the United States and overseas. Malibu Farm was founded in 2013 by renowned chef Helene Henderson and her husband, actor, film director and restaurateur John Stockwell, who have established an iconic brand and successful concept offering patrons organic, sustainably sourced produce and ingredients. As their first location in San Diego County, Malibu Farm would anchor Seaport Village at Suite C1, an approximately 14,000 square foot, two-story building located in the heart of the shopping center with a first-class full-service restaurant featuring an ice cream and espresso bar, a home goods store with Malibu Farm branded merchandise and other well curated items. Under the proposed lease, Malibu Farm would be able to host private events for small and large groups, consistent with their business model at the Malibu Pier and Newport Beach locations. This immersive, full-service dining experience would provide a wide range of unique offerings for both locals and visitors alike. Based on the overall design of Seaport Village, high-performing restaurant anchor tenants are a critical component to the success of the shopping center. A proposed long-term lease with Malibu Farm would provide the District with an opportunity to create a valued partnership with a highly sought-after operator that would join Seaport Village as an exciting, new waterfront restaurant destination on San Diego Bay.

Currently, Suite C1 is under a short-term lease with H.H. Restaurant, Inc. dba Harbor House Restaurant (The Harbor House) which was extended on September 30, 2020 for an additional year. The one-year lease term extension, which expires on September 30, 2021, provides the District and The Harbor House with a ninety (90) day termination right that can be exercised by either party at any time. Under the proposed lease with Malibu Farm, the District has no obligation or requirement to terminate its existing lease with The Harbor House unless and until such time as Malibu Farm has secured or will imminently secure all of its necessary approvals to commence construction of tenant improvements and has provided notice to the District accordingly. Therefore, during the time in which Malibu Farm is working to secure its necessary approvals, The Harbor House would continue to operate the space and pay rent to the District in accordance with its lease, provided they do not exercise their ninety (90) day termination right. To provide certainty and ensure continued operations for The Harbor House during the interim period before Malibu Farm takes possession of Suite C1, the District extended the existing short-term lease with The Harbor House for an additional year as previously mentioned. Staff would continue to work closely with The Harbor House and Malibu Farm to establish a smooth transition plan for both operators.

The proposed lease with Malibu Farm contemplates a TI allowance in an amount up to \$2.8M to upgrade the existing infrastructure of Suite C1 to be modeled consistent with the operator's brand and vision for the space, similar to the Malibu Pier and Newport Beach locations. Based on the

proposed lease structure and Malibu Farm's expected construction timeline, staff anticipates that the TI allowance would not be paid out until the second or third quarter of FY 2022 and would not impact current FY 2021 budget constraints associated with the COVID-19 pandemic. The TI allowance would be budgeted for in FY 2022 subject to Board approval upon adoption of the FY 2022 budget. Staff estimates a highly competitive 10-year IRR of 24% and an NPV of \$2.7M (using an 8% discount rate). A summary of the economic terms and projections of the Malibu Farm lease is provided in Attachment C.

The District and Malibu Farm would both maintain the right to terminate the proposed lease, with not less than 180 days' notice to the other party anytime from and after lease year five in the event of future redevelopment of the Central Embarcadero. As set forth in the proposed lease, certain conditions would have to be met in order for the District to terminate the lease. First, the District would provide notice of such redevelopment to Malibu Farm if the redevelopment has commenced or will imminently commence and impacts Malibu Farm, as determined by District. Second, both parties would use reasonable efforts to identify a new, alternative location within the redevelopment and negotiate mutually agreeable terms for Malibu Farm to continue to lease property within the redevelopment. If the parties cannot come to an agreement on a mutually acceptable alternative location within 120 days of the District's notice of the redevelopment, the District would have the right to terminate the lease by providing 180 days' notice. In the event the District terminates the lease in year five, six or seven, the District would be responsible for paying Malibu Farm a termination fee as follows: \$1,000,000 in year five, \$750,000 in year six and \$500,000 in year seven. Malibu Farm would also have the right to terminate if certain conditions occur, including (1) the redevelopment is impactful to Malibu Farm, as determined by the parties, (2) gross sales drop below a specific threshold, and (3) Malibu Farm has been operating continuously and is not in default. If the specific conditions authorizing Malibu Farm to terminate the lease have occurred and Malibu Farm elects not to terminate the lease, they would continue to operate and pay rent to the District under a temporary, alternative rent structure that would cease, and revert back to the normal rent structure, if Malibu Farm exceeds a gross sales threshold as defined in the lease. This alternative rent structure would only be exercisable one time during the term of the lease. A copy of the proposed lease with Malibu Farm is attached as Attachment D.

#### *Amendment No. 3 to Retail Insite Agreement*

To support the District's leasing initiatives at Seaport Village and to provide for commissions on the proposed lease with Malibu Farm, staff is seeking Board approval of Amendment No. 3 to the Retail Insite Agreement to amend the annual maximum expenditure, payment procedure of commissions and compensation structure for advisory services. When the Retail Insite Agreement was approved by the Board in 2018, it did not contemplate commissions for leases in excess of five years or construction of tenant improvements that would be reimbursed by the District. Consistent with the District's leasing strategy, staff is seeking Board approval of Amendment No. 3 to the Retail Insite Agreement. Under the current Retail Insite Agreement, Retail Insite can receive a maximum of \$200,000 per year in commissions for the satisfactory performance and completion of services. Since the anticipated commissions of \$281,736 would exceed the maximum annual expenditure of \$200,000, as described in the Fiscal Impact section, Amendment No. 3 would eliminate the maximum annual expenditure of \$200,000 per year to provide for commissions on the proposed lease with Malibu Farm. The maximum total expenditure under the Retail Insite Agreement would remain at \$600,000. As proposed by Retail Insite, the payment procedure would be revised to add conditions which must be met for Retail Insite to receive commissions entitled to for a lease. Such conditions for payment of commissions would be consistent with District's leases in which construction of tenant

improvements is required. Amendment No. 3 would also amend the compensation structure to provide a fee for substantial advisory services by Retail Insite to the District, as determined by the District, which do not involve sourcing a prospective tenant.

In accordance with BPC Policy No. 110, the existing Retail Insite Agreement must be amended and presented to the Board for authorization. Therefore, staff recommends the Board authorize Amendment No. 3 to the Retail Insite Agreement and waive BPC Policy No. 114 Payment of Commissions for the Leasing of Tidelands.

### **Staff Recommendation**

The proposed lease with Malibu Farm would provide the District with an opportunity to create a new and transformative partnership with an iconic, first-class restaurant operator with a local and international presence and reputation. It would build momentum, continue to catalyze leasing activity and attract additional foot traffic for Seaport Village as an exciting, new waterfront restaurant destination for both locals and visitors alike. For these reasons, staff recommends the Board adopt an ordinance granting a lease to Malibu Farm.

The proposed amendment to the Retail Insite Agreement would support the District's leasing initiatives at Seaport Village and provide for commissions on the proposed lease with Malibu Farm. Therefore, staff also recommends the Board authorize Amendment No. 3 to the Retail Insite Agreement and waive BPC Policy No. 114 Payment of Commissions for the Leasing of Tidelands.

### **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 actions to approve an ordinance granting a lease to Malibu Farm and resolution authorizing an amendment to the agreement with R.I. Properties Inc., are within the scope of the Coastal Act Categorical Determination of Exclusion (Categorical Determination) issued by the District on August 9, 2018 and a revised Categorical Determination was issued on October 30, 2019 for lease agreements for the continuation of existing uses at the shopping center currently known as Seaport Village (the Seaport Leasing Project). The District concluded that the Seaport Leasing Project, as described in the Categorical Determination, was categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 and/or Section 3.a. (Existing Facilities) of the District's Guidelines for Compliance with CEQA. The proposed Board actions are not a separate "project" for CEQA purposes but are subsequent discretionary approvals 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 actions are 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 actions comply with sections 21, 35, and 87 of the Port Act, which allow the Board to pass ordinances and to do all acts necessary and convenient for the exercise of its powers, and for the use of tidelands for all visitor-serving 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 proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do 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 they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. A Categorical Determination was previously issued for this project on August 9, 2018, and a revised Categorical Determination was previously issued for this project on October 31, 2019; therefore, issuance of a Coastal Development Permit or subsequent Exclusion is not required for the proposed Board action. 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 actions in no way limit the exercise of the District’s discretion under the District’s CDP Regulations.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Alexa Paulus  
Asset Manager, Real Estate

**Attachment(s):**

Attachment A:	Seaport Village Site Map and Proposed Premises Map
Attachment B:	Amendment No. 3 to Agreement with Retail Insite
Attachment C:	Lease Information Summary for Malibu Farm
Attachment D:	Lease Agreement with Malibu Farm

<sup>1</sup>Agreement between District and R.I. Properties, Inc., dba Retail Insite for Real Estate Broker Services on file in the Office of the District Clerk as Document No. 68690, as amended.