



## Legislation Text

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**File #:** 2020-0205, **Version:** 1

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**DATE:** May 19, 2020

**SUBJECT:**

### **RESOLUTION ADOPTING BOARD OF PORT COMMISSIONERS POLICY NO. 779: TEMPORARY RENT DEFERRAL PROGRAM REHIRE POLICY**

#### **EXECUTIVE SUMMARY:**

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 agenda recommends the Board adopt Policy No. 779: Temporary Rent Deferral Program Rehire Policy as the "worker rehire policy" to which Resolution No. 2020-034 refers. The recommended Policy seeks to balance the goals of protecting employees and allowing flexibility of District tenants to recover by setting forth an orderly, efficient, and fair process by which such employees may return to work and allow tenants to resume operations quickly and generate rent for the District to fulfill its Public Trust mission.

#### **RECOMMENDATION:**

Adopt a Resolution adopting Board of Port Commissioners Policy No. 779: Temporary Rent Deferral Program Rehire Policy.

#### **FISCAL IMPACT:**

The recommended action does not have a direct fiscal impact on the District but is intended to assist in recovery of levels of rent paid to the District from tenants.

#### **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 financially sustainable Port that drives job creation and regional economic vitality.

#### **DISCUSSION:**

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.” The recommended Policy No. 779 is the “worker rehire policy” to which Resolution No. 2020-034 refers.

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.

As a result of the COVID-19 pandemic, many District tenants are experiencing a decline in business at their lease 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.

On May 5, 2020, Staff posted a discussion draft of the policy on the District’s website seeking comment from interested stakeholders. Representatives of the San Diego Port Tenants Association and Unite Here Local 30 were also informed. Staff took into account the comments from interested stakeholders in drafting the proposed policy.

Staff recommends the Board adopt Policy No. 779: Temporary Rent Deferral Program Rehire Policy.

### **General Counsel’s Comments:**

The Office of the General Counsel has reviewed and approved this agenda, the proposed policy, and resolution, as presented, as to form and legality.

### **Environmental Review:**

The proposed Board action, including without limitation, a resolution adopting Policy No. 779: Temporary Rent Deferral Program Rehire Policy, does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board’s discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring

implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action complies with sections 21, 35, and 87(b) 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 to collect and retain rents and other revenues from the leasing, franchising, and privileging of District tidelands. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed 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 they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. 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. Therefore, issuance of a CDP or exclusion is not required at this time.

#### **Equal Opportunity Program:**

Not applicable.

#### **PREPARED BY:**

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#### **Attachment(s):**

Attachment A: Proposed Board Policy No. 779: Temporary Rent Deferral Program Rehire Policy