



Legislation Text

File #: 2020-0435, **Version:** 1

DATE: December 28, 2020

SUBJECT:

PRESENTATION ON THE SAN DIEGO PORT TENANTS ASSOCIATION REQUEST FOR ADDITIONAL RENT RELIEF AND DIRECTION TO STAFF, AS NECESSARY

EXECUTIVE SUMMARY:

District tenant businesses in the hospitality, tourism and convention center dependent sector have been significantly impacted by the COVID-19 pandemic and associated State and County orders and restrictions including the most recent regional stay-at-home order issued by the California Department of Public Health. The District has worked constructively with its tenants to assist with their economic recovery as the region has transitioned through various business restrictions and closure orders. At the December 8, 2020 Board of Port Commissioners (Board) meeting, the San Diego Port Tenants Association (PTA) requested that the Board take immediate action to provide rent relief to hospitality, tourism and convention dependent tenants impacted by the most recent regional order (Attachment A - PTA Letter). The PTA requested that the District waive Minimum Annual Rent (MAR) and require tenants to pay only applicable percentage rent for the duration of the stay-at-home order, plus an additional 60 days to provide time for business reopening and stabilization. The estimated fiscal year (FY) 2021 financial impact to the District of the PTA request is approximately \$10 million based on five months of percentage rent only payments to the District. This is in addition to the financial losses the District has already sustained.

The Board previously authorized a two-pronged approach to rent relief which included a rent deferral program giving the majority of the District's tenant portfolio, including both fixed and percentage rent-paying tenants, access to six months of rent deferral with repayment commencing in Fall 2021, and individual lease restructures for tenants with the most need on a case by case basis (Attachment B - Combined Rent Deferral Program Agenda). In response to the most recent regional stay-at-home order and the PTA request, staff has accelerated negotiations with all tenants seeking a lease restructure and provided them with term sheets for their consideration. In addition, staff has successfully renegotiated 36 of the 60 tenant leases at Seaport Village and has rent proposals out to the balance of Seaport Village tenants seeking rent relief. In short, staff has demonstrated the ability to work with tenants in need and as a result, Seaport Village is currently 83% occupied.

Staff believes that the current approach already allows staff to work directly with tenants as needed and is not recommending any additional programs but rather focusing time on trying to assist those tenants most in need. Unless otherwise directed, staff remains committed to working with those tenants most impacted by the ongoing pandemic and recent regional order. As previously directed, staff will continue to engage tenants on an individual basis and bring recommendations for lease restructures to the Board as needed.

RECOMMENDATION:

Receive staff presentation and provide direction to staff, as necessary.

FISCAL IMPACT:

This agenda item is for presentation purposes only. Depending on the Board's direction, the estimated fiscal impact to the District will be reflected in next month's FY 2021 budget reforecast.

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:

PTA Request

Due to the ongoing economic impacts of the pandemic, and the recent regional stay-at-home order issued by the California Department of Public Health, the PTA requested at the December 8, 2020 Board meeting that the District take emergency action to assist the impacted tenants. The PTA's request is for the District to waive MAR and require tenants to pay only applicable percentage rent for the duration of the regional stay-at-home order, plus an additional 60 days to provide time for business reopening and stabilization. Staff's estimation of the financial impact to the District from such a request is approximately \$10 million in FY 2021, assuming five months of percentage rent only payments. The PTA is not requesting rental assistance for fixed rent paying tenants.

In the letter, the PTA states that the previously authorized rent deferral program and individual workouts were not sufficient to address the impacts of the pandemic. The PTA further states that the District's approach to rent relief makes the District whole in the end while the tenants are not made whole. To clarify, since the onset of COVID-19 in March 2020, the District is expected to incur \$84 million in operating revenue losses through June 2021, a 32% decline from expectations since March 2020. These losses are largely attributable to declining tenant rents since the average MAR across the portfolio is approximately 59% of actual rent paid meaning that on average, tenant revenue could drop by more than 40% before percentage rent generated by the tenant's business would not cover MAR payments. This is intended to provide concession rent paying tenants with a built-in buffer to adjust to changing economic conditions. Due to the unprecedented nature of the pandemic, the MAR buffer has not been sufficient in all cases to absorb the losses to tenant revenues. However, the \$84 million loss to District revenue is permanent and does not represent a deferral amount.

Current Status of the Portfolio

Due to the regional stay-at-home order, the following tenant businesses have notified staff that they have temporarily ceased operations:

- Bali Hai
- Tom Ham's Lighthouse
- Fathom Bistro
- Coasterra/Island Prime/C Level
- Old Town Trolley
- Maritime Museum
- USS Midway Museum
- Edgewater Grill (Seaport Village)
- San Diego Pier Café (Seaport Village)
- Harbor House Restaurant (Seaport Village)

Staff has recently issued temporary waivers of the obligation to continuously operate the applicable leased premises to impacted tenants from December 7, 2020 through January 15, 2021.

Participation in Current Rent Deferral Program

Tenant participation to date in the rent deferral program has been moderate. While many tenants have been impacted by the loss of sales and increased costs during the public health crisis, others have been able to endure without participating in the rent deferral program.

As of December 18, 2020, there are 30 tenants participating in the District's rent deferral program; 20 in the Concession Tenant Rent Deferral Program; 1 in the Fixed Rent Tenant Rent Deferral Program and 20 in the Extended and Combined Rent Deferral Program. Of these, 9 tenants have exceeded their MAR for the year and no longer have a rent deferral balance. Tenants not participating in the program include marinas, yacht clubs, sportfishing landings and convention hotels. Many of these tenants had already met their MAR for the year and therefore had no rent to defer, while others did not want to comply with the requirements to accept state and/or federal aid or the worker rehire policy.

The current economic impact of the rent deferral program to the District is \$2.4 million (FY 2020: \$1.5 million; FY 2021: \$900,000) in deferred rent for all participating tenants. Most of the deferred rent is scheduled to be repaid in FY 2022 beginning in September 2021.

Tenants Requiring Case by Case Negotiation

Some tenants have been impacted to a greater extent by the pandemic and the regional stay-at-home order and require a structural reset of their agreement with the District to remain viable. Certain tenants may have been in a difficult economic position prior to the pandemic with high MAR or improvement rent, or they may rely more exclusively on group and convention type business and out of town visitors to generate revenue. Staff has been actively engaged with a limited number of tenants that have requested workouts. In response to the regional order and recent PTA request, staff has accelerated these negotiations and presented term sheets to the tenants for their feedback with a goal of seeking Board direction in Closed Session in January. Staff will continue to work on a case-by-case basis with any tenants that request workouts and may not otherwise remain economically viable during the pandemic. Individual workout recommendations will be presented to

the Board as needed.

Seaport Village

Staff has renegotiated 36 of the 60 leases at Seaport Village with another 15 leases under negotiation. 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. For these reasons, staff continues to believe that we should address the Seaport Village tenants on a case by case basis to continue to mitigate and address the following issues:

- More than 60% of Seaport tenants (by square footage) have the ability to terminate their leases on short notice with no penalty, meaning many of them can unilaterally decide whether to terminate or try to reopen.
- Increasing vacancy at Seaport Village would negatively impact the remaining tenants and the overall viability of the center.
- Most Seaport tenants are on short-term leases of five years or less with no significant capital investment in their leaseholds.
- The assets at Seaport Village are District-owned improvements and will become liabilities if we are unable to lease them.
- Tenants pay common area maintenance and marketing fees, which are needed to maintain the viability of Seaport Village.

Next Steps

Based on previous Board direction, staff will continue to address individual tenant situations on an as-requested and as-needed basis and will return to the Board for direction on individual workouts, as needed, unless otherwise directed.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as presented and approves it as to form and legality.

Environmental Review:

The proposed presentation on the San Diego Port Tenants Association request for rent relief and Board direction do 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 Board's direction 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 presentation and Board direction in no way limit

the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed presentation and Board direction comply with Section 35 of the Port Act, which allows for the Board to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the presentation and Board direction are consistent with the Public Trust Doctrine.

The proposed presentation and Board direction 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. 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 presentation and Board direction in no way limit 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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Attachments:

Attachment A: PTA Letter

Attachment B: Combined Rent Deferral Program Agenda