

PORT OF PORT TOWNSEND

POLICIES AND PRACTICES

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I. ORGANIZATIONAL MANAGEMENT AND BUSINESS PRACTICES

A. BUSINESS PRACTICES

The business practices of the Port of Port Townsend are directed toward achieving the Strategic Plan objectives and strategies. Flexibility is needed, however, to adapt to changing conditions of a competitive market and remain mindful of community values. Accordingly, the statements that follow are typical business practices of the Port, subject to change as conditions warrant.

1. The Port will maintain a financial plan that integrates the Port's guiding documents; the Comprehensive Scheme of Harbor Improvements & Strategic Plan, Business Plan and Capital Improvement Plan. These plans will consider market conditions and identified and expected costs for capital maintenance, operations, and replacement of existing capital facilities.
2. Prices and charges for the use of Port facilities will be set at market rate. The Commissioners may set policy to deviate from market rate when there are sufficient findings of community benefit and value.
 - a. The Port will charge lease rates that over time will generate sufficient revenue to cover all proportionate direct and indirect costs of operations associated with the use of that asset.
 - b. Rates will be designed to recoup over time all expenses, including general and administrative, replacement costs, debt service, and some return to the Port.
 - c. Consideration may also be given to the overall economic impact that a tenant will have on the community in determining if rates could warrant a subsidy.
 - d. The Port will conduct periodic surveys to inform Port rent, lease, and moorage rates, as well as user fees.
 - e. It is the policy of the Commission to require security from all Port tenants in accordance with RCW 53.08.085.
3. The Port seeks to manage its properties utilizing a "cost center" approach in order that each facility be as self-supporting as possible.
 - a. This cost center approach will include projections for operating revenue, operating costs and capital asset and common area maintenance, operation and replacement.
 - b. Capital asset maintenance and operation costs should be funded by operating income.
 - c. Capital replacement costs should be funded by
 - o operating income from the respective cost center
 - o grant funds, if available
 - o debt serviced by general tax levy revenue, if available

Comment [SG1]: Comm. Tucker: What if market rate is sufficient to cover all costs?

Comment [SG2]: Comm. Tucker: Specify types of methods such as use of a real estate appraiser, a market analysis by a real estate firm or use of market information gathered by a experienced professional and/or staff.

Comment [SG3]: Comm. Tucker: give examples of types of security, e.g. cash, bond, "rental insurance, bond or other security satisfactory to the Commission."

Comment [SG4]: Comm. Tucker: should be operating income from each cost center and not port-wide general operating income.

TUCKER
PUTNEY
HANKE

B. LEASING POLICY

1. INTRODUCTION

It is the policy of the Port of Port Townsend to retain and recruit businesses that will provide sustainable community-wage jobs.

The Port takes seriously its mission to generate countywide economic vitality, retain existing businesses, attract new business, and add good jobs that will provide local employment opportunities. The Port competes with other regional and national governments and entities for these jobs. Accordingly, it is the Port's policy to negotiate leases that will attract and retain businesses based on sound business, financial and operational plans.

In order to strive towards these goals, the Port must achieve a solid financial position.

2. GENERAL POLICIES

The general policies of the Port regarding industrial/commercial land and buildings are as follows:

a) *Highest and Best Use:*

Seek the highest and best use of all Port properties, consistent with principles of prudent land use planning.

"Highest and best use" for the Port of Port Townsend means an appraisal process to determine the use of the property which produces the highest value for the land which factors - but is not necessarily limited to - the following considerations:

- 1) its reasonably probable and lawful use;
- 2) the physical possibility/suitability of the use;
- 3) the financial feasibility of the use;
- 4) and the social and environmental impacts of the proposed use on the wider community.

Of necessity, the definition of the term is case specific, and is likely to change over time based upon economic and social conditions, and particular site characteristics.

Comment [SG5]: NOTE: This definition of "highest and best use" within the framework of a triple bottom line is provided at Comm. Putney's request and is also responsive to comments from Comm. Hanke.

b) Rental Rates:

- i. Conduct recurring market analyses **at least once every three years** to establish and maintain appropriate rental rates for Port-owned land and buildings. Conduct periodic rental surveys of comparable properties in the Western Washington area (including land, buildings, and private and public assets). The values and rental rates documented in such surveys will be regarded by the Port as general guidelines in negotiating and/or amending future leases, and shall not be considered as binding upon the Port in any future negotiations. The Port will also consider other indicators (**modifiers**) of reasonable fair market rental value in setting rental rates, including parcel size, location, inflation occurring since the date of the last survey, changes in the rental market since the date of the last survey, waiting lists, competing offers for the same properties, **benefit to the community, the needs of the Port** and any other evidence of fair market rental value.

Market analyses and rental surveys may be completed by a licensed real estate appraiser, a real estate firm, by subscribing to a real estate listing service that provides market data or by gathering market information by experienced professionals or staff.

Comment [SG6]: Comm. Hanke states that "paragraph b) should work towards establishing a fair market value of rent rates with an overall 'rent schedule' that is agreed upon by representatives of the community, a fair market appraiser, and the Port Commission."

- ii. In deciding upon rents to be charged for ground leases, the Port will strive to generate an annual return of approximately nine and one-half percent (9.5%) of the fair market value of a fee simple interest in the land and improvements being leased, unless demand for the land indicates a higher return may be obtained.

Comment [SG7]: Commissioner Hanke does not agree with 9.5%

Comment [SG8]: This language is taken directly from Resolution No. 351-01.

c) *Rent Adjustments:*

- i. Each lease will include a provision that allows the Port to ~~periodically~~ adjust rental rates to the fair market rental rates then prevailing for comparable properties in the Western Washington area at five year intervals (beginning January 1, 2020), bearing in mind all allowable uses of the property and all services and amenities available to the property by virtue of its location. These adjustments are intended to minimize the misalignment that may occur between a fixed rate with CPI escalations and a reviewed market rate.
- ii. Between periodic rate adjustments in i. above, ~~In addition to the rent adjustment described above, require annual~~ rent adjustments equal to the amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bellevue (compiled by the US Department of Labor, Bureau of Statistics) plus an additional 1% will take effect annually.
- iii. Each lease, regardless of the date of its instantiation, will be reviewed and adjusted as of January 1st each year. Any adjustment per ii. Above will be prorated for that part of the year between the instantiation date and January 1st. ~~Rental rate adjustments, whether periodic or annual CPI-U + 1%, should be implemented either on January 1st.~~ Rent adjustments should not result in a reduction in rent from the rate paid in the prior year.

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Comment [SG9]: Comm. Hanke: throughout this draft there is the absence of how it works for a business that needs to finance debt in order begin business and how the financial institution and debtor work out the risk factors. This paragraph and others will not allow a financial institution to feel like the debtor is on secure ground with the Lessor. If that is not the case then prospective businesses will not be able to establish themselves with any kind of certainty in what their long-term costs will be.

d) *Lease Term & Options to Extend:*

- i. Initial term. An initial lease term for either land or buildings will be determined in consideration of the needs of the tenant, design standards of any improvements, the useful life of the improvements, the economic value provided to the community, and the needs of the Port.
- ii. Options to extend. The initial term may be extended, provided that: the tenant has met the maintenance standards outlined in the lease, made upgrades extending the useful life of any improvements (including buildings), and the proposed additional term is supported by outside professionals such as structural engineers and/or architects, licensed inspectors, the generation of economic value to the community, and the needs of the Port.
- iii. Generally, the initial lease term and option periods together should not exceed the anticipated useful life of the improvements. However, in no circumstance shall the initial lease term together with option periods exceed fifty (50) years.

Comment [SG10]: Struck by request of Comm. Putney

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Comment [SG11]: All three commissioners questioned whether the Port needs to maintain flexibility to be able to lower rents in the case of an economic downturn such as what happened in 2008.

Comment [SG12]: Comm. Hanke: Again in paragraph D we must be able to address the relationship between businesses and lenders and create an environment where those risks are mitigated as much as possible. This could mean longer term leases with more agreed upon escalators but predictability.

3. STANDARD LEASE PROVISIONS

Lease conditions vary from tenant to tenant. Good business practice requires that certain standard (i.e., "boilerplate") provisions be included in all leases. Such boilerplate provisions include, but are not limited to: indemnification and hold harmless, environmental, the Port's right of entry for inspection, maintenance of the premises, taxes, fixtures and equipment, liability and casualty insurance, retention of air rights, FAA requirements, condemnation, default, costs and attorney fees, notices, waivers, month-to-month tenancy on termination of lease, and others.

a) *Assignment:*

It is the policy of the Port to prohibit any assignment or sublease by a tenant without the prior written consent of the Port having first been obtained. ↓ *Structural Changes:*

Structural changes to buildings require the prior written consent of the Port. Upon termination of the lease, state law requires that all improvements be either removed at the cost of the tenant or, at the Port's option, become the property of the Port.

b) *Insurance:*

Insurance provisions require the tenant to provide certificates of insurance with the Port listed as additional insured, and to prohibit cancellation of insurance without prior notice to the Port. General liability insurance must be provided for the benefit of the Port in an amount deemed appropriate by the Port and typically not less than \$1,000,000 combined single limit.

c) *Rent Security:*

It is the policy of the Port to require security **in the form of rental insurance, bond or other security satisfactory to the Commission** from all Port tenants in accordance with RCW 53.08.085. **The security is typically provided by the tenant to the Port in the form of a security deposit of three (3) months' rent under the terms of the lease agreement between Port and the tenant. The Port will realize the security in the event of a default by the tenant. The Commission reserves the right to waive this requirement on a case by case basis.**

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Comment [SG13]: Comm. Hanke: drop the words 'sole discretion' and add the words, 'the port's consent will not be unreasonably withheld.'

Comment [SG14]: Staff recommends obtaining language that res from Port Attorney.

Deleted: The Port may grant or withhold consent to a requested assignment or sublease at its sole discretion

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d) *Lease Extensions:*

Lease extensions may be granted, and will be determined based on the following: tenant needs, tenant performance under prior lease terms, jobs produced, community contributions, proposed capital investments, condition of the building, and the needs of the Port. At the time of any such lease extension, the rental rate will be adjusted to the then prevailing fair market rental rate.

e) *Termination of Lease*

~~At the termination of the lease, the Port has the right to request the tenant to remove all tenant-owned or constructed improvements, including the building(s). This supports the goals of quality construction, maintenance standards, and minimizes the financial exposure to the Port.~~

4. PERFORMANCE REQUIREMENTS

The Port recognizes its obligation to ensure development and continued operation of viable industrial and commercial enterprises on its property as well as an obligation to incentivize businesses to operate in the best interests of the larger community. A business on the basis of; stated capital investment amounts, employment of a minimum number of persons (from the local labor force when practical) type of jobs (sustainable community-wage), production above a certain level, or some other reasonable measure to ensure a viable activity may request a preferential rate to better attain its objectives. When such preference is asked and granted by the Commission, the Port shall include a base rate for the lease as well as the preferential rate based on the stated benefits for which the preference was granted. It is then the responsibility of the Port to monitor the business with respect to those sated benefits. Failure to meet the agreed upon performance goals will result in the lease reverting to base terms as stated in the lease. ~~One means the Port may employ to accomplish this goal is to place performance requirements in its leases. Such requirements are established to ensure that the tenant will develop the property as the tenant has represented to the Port. The performance requirements may take various forms depending upon the nature of the development, such as: stated capital investment amounts, employment of a minimum number of persons (from the local labor force when practical), type of jobs (sustainable community wage), production above a certain level, or some other reasonable measure to ensure a viable activity.~~ It is not the intent to establish such performance requirements at a maximum level, but rather, at a threshold level of viability for operation of the business within the preferential terms of their lease with the Port.

5. MAINTENANCE COSTS

a) *Port-owned buildings.*

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Should the Port conclude that it would be of substantial benefit to the community as a whole that a lease be terminated prior to the expiration of the lease term, the Port will purchase the building for the current fair market value of the building as determined by appraisal or commercial real estate professional.¶

Comment [SG15]: Comm. Hanke: ... are both problematic because it requires the Port to establish standards that can be subjective and difficult to administer equitably . How much community contribution? How many jobs per foot is adequate. Performance requirements? Who is going to monitor all this?

Comment [SG16]: Comm. Tucker: Question as to whether further discussion is needed regarding common areas

The Port will schedule and coordinate all landscape, storm water, HVAC systems, sprinkler systems, parking lot, and gutter maintenance and bill each tenant as part of its common area maintenance fees.

b) *Land leases.*

The Port will schedule landscape and parking lot maintenance for tenants and bill each tenant as part of its common area maintenance fees.

6. CAPITAL IMPROVEMENTS

For Port-owned buildings, Port staff will develop management plans that include maintenance and capital improvement schedules and budgets for each building. The maintenance and capital improvement budgets will be included in the Port's annual operating and capital improvement budgets and six-year capital facility plan (updated annually). This will include a reserve sinking fund for replacement of deteriorating items like roofs, asphalt, building poles, parking lots, landscaping, etc.

7. OPEN PUBLIC RECORDS:

All information provided to the Port is subject to the requirements of the Washington Public Records Act (Chapter 42.56 RCW). If a public records request is made, the Port will notify the party (typically a prospective lessee) submitting the records. ~~The requesting party will be charged assume all costs associated with the disclosure or non-disclosure of such documents as permitted by the Public Records Act and per the Port's fee schedule.~~

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Comment [SG17]: To be reviewed by Port Attorney.

8. VARIATIONS FROM POLICY

The policy set forth above may be varied from time to time to fit instances as is deemed advisable by the Port Commission.

9. REVIEW OF POLICY

This leasing policy will be reviewed from time to time as deemed appropriate by the Port Commission.