



**Port of Port Townsend  
Public Workshop  
Wednesday, June 9, 2021, 10:00 AM**

**Via Zoom <https://zoom.us/>**

**or call (253) 215-8782 – and use Webinar ID: 862 6904 3651, Password: 911887**

*This meeting will only be accessible remotely, as per Governor's Proclamation 20-28.*

### **AGENDA**

- Port Lease Policy review

*This workshop is open to Commissioners, Management, other Port staff, consultants, and the public. It is not the opportunity to give public testimony, but if the Commissioners request input from individuals in the audience, those people may speak. The principal purpose of the workshop is to allow Port staff and the Board of Commissioners to communicate with each other and/or Consultants, answer Commission questions, and get the Commission's opinions and input regarding the subject topic(s).*

**DATE:** 6/4/2021  
**TO:** Port Commission  
**FROM:** Eric Toews, Deputy Director  
**SUBJECT:** Leasing Policy – Staff Discussion Draft

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**BACKGROUND:** The Commission will initiate its review and discussions concerning potential amendments to the Port’s Leasing Policy at its Wednesday, June 9, 2021, Public Workshop session. This is an opportunity to review and evaluate the effectiveness of the present policy, which was adopted on June 12, 2019.

The current policy was developed in collaboration with the Leasing Policy Advisory Committee (LPAC), which met a number of times in late 2018 and early 2019 before formulating its recommendations to the Commission. The policy has generally served us well over the past two years and has ensured broad consistency and fairness in Port dealings with current and prospective tenants. Nevertheless, there are a few provisions of the policy that may benefit from revision and clarification. A “Discussion Draft” is attached to this memorandum which highlights a number of suggested changes that staff believe would help to clarify and strengthen the policy.

The areas of the policy which staff would suggest revisiting include the following:

- **Recurring market rate analyses** – Further direction is needed, both as to how often market rate analyses should be performed, and who is authorized to prepare them (see suggested revised language in section B(3) of the attached “Discussion Draft”). The current policy would require retaining a certified appraiser to prepare such analyses at quite considerable cost.
- **Time period to achieve fair market value rent and post required security deposit** – The present policy allows up to two (2) years to achieve market rent but does not unambiguously authorize an analogous period to incrementally post the security deposit, which is equivalent to three (3) months’ rent plus taxes.
- **Frequency of “base rate” rent adjustments and 5% ceiling on increases** – The adopted policy states that market rent adjustments cannot occur more frequently than once every five (5) years and may not result in more than a 5% increase. This lapse of time coupled with the 5% ceiling, could result in a considerable misalignment in a rapidly evolving real estate market.
- **Tenant improvements to Port-owned buildings** – Although this has yet to be developed, staff would suggest incorporating policy guidance concerning tenant improvements to public buildings, and the particular circumstances that would require

the Port (rather than the tenant) to pursue improvements as “public works” subject to public bidding and prevailing wage requirements.

- **Clarification of assignment and sublease requirements** – Staff would suggest considering the inclusion of clarifying language governing assignments and subleases to ensure that the public’s interest is better protected, and that lessees do not sublet Port-owned spaces at substantially higher rents than those established in the underlying lease.
- **Increase in Commercial General Liability Insurance limits** – The present standard in commercial leasing is \$2,000,000 combined single limit, rather than the current \$1,000,000 enshrined in the adopted policy.

A number of other rather minor changes are also suggested in the attached “bill format” Discussion Draft.

**RECOMMENDATION:** None. This is presented only for discussion and direction at your June 9, 2021 Public Workshop.

**ATTACHMENT:** A “Discussion Draft” of potential changes to the Lease Policy presented in “bill format” (note: substantively changed sections highlighted in gray with modified language depicted in ~~strikeouts~~ and double-underlining).



# PORT OF PORT TOWNSEND

## ORGANIZATIONAL MANAGEMENT & BUSINESS PRACTICES

### A. BUSINESS PRACTICES

**INTRODUCTION:** The Port is the steward of public assets and provides essential public services for all the citizens of Jefferson County. The business practices of the Port of Port Townsend are directed toward faithful stewardship of public assets and achieving the Port’s Strategic Plan objectives and strategies. Flexibility is needed, however, to adapt to changing conditions of a competitive market and to 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 sound financial plan. The financial plan will integrate be consistent with, and help to implement, the Port’s guiding documents: The Comprehensive Scheme of Harbor Improvements, & Strategic Plan, Business Plan, and Capital Improvement Plan. These plans guiding documents will consider factor in market conditions and identified and expected costs for capital maintenance, operations, and replacement of existing capital facilities.
2. The Port will be a good steward of the public assets entrusted to the Port.
  - a. The Port will seek to maintain, preserve and enhance the public assets under its stewardship.
  - b. The Port will comply with applicable environmental laws and require its tenants to follow environmental “best management practices”.
  - c. The Port will seek to charge fees and rents for the use of Port facilities at “fair market value” to ensure that over time the Port remains a good steward of public assets by providing sufficient revenue to maintain and enhance the public assets and services provided by the Port.
3. The Port has a long-term goal of enhancing the public assets entrusted to it. Therefore, it must operate in a fiscally prudent manner today and tomorrow to achieve this long-term goal.
4. The Port will be a good and reliable business partner for its tenants and users.
  - a. The Port will provide fair and equal treatment to all tenants and users.
  - b. The Port will seek to provide facilities and services that enhance business success for Port tenants and users while maintaining a sound financial footing for the Port.
  - c. The Port will seek to provide a business environment that attracts new tenants.
5. The Port will be a good and reliable partner with other local governments, state agencies, tribes and the federal government.
  - a. The Port will seek ways to cooperate with other government partners to enhance the economic, environmental and community quality of life in Jefferson County.
  - b. The Port will meet regularly with other local governments to explain the needs of the Port, to hear the needs of other governments and to seek common approaches and goals for the betterment of the citizens.

6. The Port will be a good and reliable business partner to the business community in Jefferson County.
  - a. The Port will seek ways to cooperate with the business community of Jefferson County to enhance the economic, environmental and community quality of life in Jefferson County.
  - b. The Port will meet regularly with business and civic organizations to explain the needs of the Port, to hear the needs of others and to seek common approaches and goals for the betterment of the citizens.
  
7. The Port will use a “cost approach” for asset management. The Port seeks to manage its real and personal property 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 maintenance, operation and replacement.
  - b. Capital asset maintenance and operation costs should be funded by operating income from the cost center.
  - c. Capital replacement costs should be funded by the following:
    - i. Operating income from the respective cost center;
    - ii. Grant funds, if available;
    - iii. Debt serviced by ~~general~~ tax levy revenue, if available; and
    - iv. Special assessments (where costs are shared by benefitted businesses).

## **B. LEASING POLICY**

**INTRODUCTION:** A sound Leasing Policy is key to the long-term viability of the Port. The Port generates significant revenues which it uses to preserve and enhance its properties and facilities and thereby help drive the economy of Jefferson County. It is the policy of the Port of Port Townsend to: (i) retain and recruit businesses that will provide sustainable community-wage jobs, and (ii) seek rents and charges for the use of public real and personal property that provide a fair rate of return to the citizens of Jefferson County.

The Strategic Plan articulates how the Port intends to fulfill its mission to the community. The Strategic Plan makes clear that the Port takes its mission to generate countywide economic vitality and employment opportunities seriously, but that it wishes to do so in a manner that balances the economic, environmental and social consequences of its decision-making. Consistent with the Strategic Plan, it is the Port’s policy to negotiate leases that will: (i) attract and retain businesses based on sound business, financial and operational plans; and (ii) provide a fair rate of return for the Port so that the Port can continue to invest in the economic vitality of the community.

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

1. Rental rates and charges for Port real and personal property should be the fair market rental rate and charges. It is recognized that fair market value rental rates and charges help the Port to maintain the public assets thereby providing a predictable environment for Port tenants and quality facilities and services to the citizens of Jefferson County. The Port will generally charge fair market value lease rates, rental rates and charges for the use of Port real and personal property assets.

STAFF DISCUSSION DRAFT - 06/04/21  
Bill Format

2. Fair market value rental rates should be based upon the value of the Port real property and improvements thereon multiplied by a Port standard rate of return. The value of Port property and improvements multiplied by a Port standard rate of return will provide a fair and equitable method of determining rental rates that treats all tenants fairly and provides a fair return to the citizens of Jefferson County.
3. The value of Port property and improvements should be determined by recurring market analyses. The Port should conduct recurring market analyses (i.e., at least once every five (5) years) to establish and maintain appropriate rental rates for Port-owned land and buildings. The Port will conduct periodic rental surveys of comparable properties in the Western Washington area (including land, buildings, and private and public assets). Market analyses and rental surveys may be completed by a MAI (Member of the Appraisal Institute) appraiser, a real estate firm, by subscribing to a real estate listing service that provides market data, or by using other market information gathered and evaluated by experienced professionals or Port staff. 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, the overall economic climate and any other evidence of fair market rental value.
  - a. The Port should provide a table of the fair market value rental rates for all its classes of properties.
  - b. Absent a compelling reason, generally, the Port will charge the fair market value rental rates and refrain from providing a special rate to a particular tenant because this is generally unfair to other similarly situated tenants and is not in keeping with the Port's stewardship responsibilities.
  - c. Depending on the particular circumstances, tenants may be allowed a reasonable period (not to exceed two (2) years) to reach fair market value rent. Additionally, and depending upon the particular circumstances and the length of the lease term, a reasonable period of time may be allowed for tenants to incrementally post any required security deposit (not to exceed two (2) years).
4. The Port's standard rate of return. Fair market rental value is based on the fee simple value of the Port real property and improvement thereon multiplied by at least nine and one-half percent (9.5%).
5. Rental rates should be adjusted annually and reevaluated periodically. Generally, Port expenses, such as personnel, maintenance and repair, increase over time. Likewise, rental rates should increase over time and in-step with increases in the private sector rental market in Jefferson County. Therefore, 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 (5) year intervals (beginning January 1, 2020) (no more frequently than once every three (3) years) 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. However, periodic market rate adjustments should not result in more than a five percent (5%) increase in rent from the rent paid in the prior year. Alterations or improvements undertaken by a tenant to

make a property suitable for a tenant's purposes should not be factored in the valuation of the rental rate for a renewal or extension term of that tenant's lease.

- a. Between periodic rate adjustments in 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) will take effect annually.
- b. Each lease will allow for the automatic CPI increase on the anniversary of its effective date. Rent adjustments should not result in a reduction in rent from the rate paid in the prior year.

6. Lease term & options to extend. An initial lease term for either land or buildings will be determined in consideration of the needs of the tenant, the investment 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. The lease may provide options granted to the tenant to extend the lease upon prior written notice delivered at least ninety (90) days prior to expiration of the initial or any extended lease term.

- a. 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.
- b. Generally, the initial lease term and option periods together should not exceed the anticipated useful life of the improvements, or thirty (30) years.
- c. Longer term leases may require the tenant to periodically upgrade improvements.

7. Special assessments for Capital Improvements. Different classes of Port tenants and facility users benefit from particular Port capital infrastructure and improvements (e.g., Boat Yard stormwater system improvements, haul-out piers, etc.). From time to time, the Port may apply special assessments to fund the cost of capital improvements that directly benefit specific tenant classes and user groups. These special assessments should ensure that all directly benefited users equitably share in the cost of such capital improvements. The Commission will ensure that special assessments are subject to adequate public notice and opportunity for input prior to adoption and implementation.

8. Non-exclusive common areas – multi-tenant buildings. The Port recognizes that multiple tenants may use common areas within Port-owned multi-tenant buildings such as entrance lobbies, restrooms, hallways, stairways and storage areas. The Port may require tenants that use common areas in multi-tenant buildings to pay a proportionate share of fair market rent for the non-exclusive use of such areas, and share in an equitable manner, in the maintenance and upkeep of the common areas with the Port and other common area users.

9. Tenant improvements to Port-owned buildings. [NOTE: This is a placeholder for a new policy that would seek to clarify Port policy on tenant improvements to public buildings, and the particular circumstances that would necessitate a “public work” subject to prevailing wage requirements under Chapter 39.04 RCW].

## C. STANDARD LEASE PROVISIONS

**INTRODUCTION:** Prudent business practice requires that a standard Port lease be the basis of all lease negotiations. A standard lease provides fairness to all Port tenants and protection of public assets. It is noted that as the steward of public assets the Port is a unique landlord that must act in the public interest. Such standard provisions include but are not limited to the following: 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, and month-to-month "holdover" tenancy upon termination of lease.

1. Use. The Port will seek to limit the use on its leaseholds to a specific purpose. Leases that allow that provide for "all use allowed by zoning" or "all legal uses" will not be approved.
2. Rent. The Port leases will contain standard provisions related to rent including late charges and penalties. The calculation of rent will include exclusive use areas and non-exclusive (common area) use areas within Port-owned multi-tenant buildings.
3. Multi-tenant buildings – Common area charges. Tenants using common areas within Port-owned buildings may be required to pay an equitable share of the cost of maintaining and operating such areas.
4. Utility charges. In addition to rent, tenants will pay for utilities used by the tenant and billed to the Port. Where possible, Port tenants should establish their own accounts with utility providers. Port utility charges, including water, should be priced to allow the Port to maintain and operate the system.
5. Rent security. All leases in excess of one-year should be secured by a rent performance bond or other security (cash deposit, blocked account) acceptable to the Port in an amount of not less than three (3) months' rent, applicable Washington state leasehold excise tax, anticipated common area charges, and anticipated utility charges. Leases of one year or less (including all options to renew) may be secured by one months' rent, applicable Washington state leasehold excise tax, and anticipated utility charges. However, pursuant to RCW 53.08.085, the Port Commission, in its sole discretion, may raise, lower, or waive the required rent security on leases of real property.
6. Structural changes or improvements. Structural changes to buildings require the prior written consent of the Port. Upon termination of the lease, all tenant owned improvements must be removed at the cost of the tenant, or, if not removed by the tenant and at the Port's option, either: (i) removed by the Port at the tenant's expense; or (i) become the property of the Port. Alterations or improvements undertaken by a tenant to make a property suitable for the tenant's purposes should not be included in the valuation of the rental rate for a renewal or extension term of that tenant's lease.
7. Assignment or sublease. The Port generally prohibits any assignment or sublease by a tenant without the prior written consent of the Port having first been obtained. The Port will allow assignment of the tenant's leasehold interest as collateral for a loan where the proceeds will be used on the leasehold. Assignment or subletting without prior Port consent will, at the Port's option, constitute a default curable after notice, or a non-curable breach without



necessity of any notice and opportunity to cure. The Port's consent to any proposed assignment or subletting is required both as to the terms and conditions, as well as the consistency of the proposed assignee's or subtenant's business with other uses or tenants in the vicinity of the premises. In addition, as to any assignee (but not as to any sublessee), the Port's consent shall be required as to the reasonable creditworthiness of the proposed assignee in view of market conditions at the time for comparable leases. In no event will the Port authorize subleases or sub-rental agreements that seek to charge rents substantially in excess of those required in the underlying agreement with the Port (i.e., more than 15%).

8. Liability Insurance. Insurance provisions require the tenant to obtain and maintain commercial general liability insurance with the Port endorsed as an additional insured and prohibit cancellation of insurance without prior notice to the Port. The current amount of required insurance is ~~\$1,000,000~~ \$2,000,000 combined single limit. The Port may periodically revise this amount to keep pace with market conditions. The Port may require additional forms of insurance or additional limits of insurance for particular uses (for example pollution legal liability for a fueling operation).
9. Damage or destruction of tenant property on leasehold. The tenant will be solely responsible for damage or destruction of its property on the leasehold. This risk should be covered by tenant insurance.
10. Limited waiver of immunity under the Industrial Insurance Act. The Port will require all tenants to provide a limited waiver of immunity under the Industrial Insurance Act or other similar federal scheme for personal injury lawsuit against the Port brought by employees of the tenant.
11. Indemnifications. The tenant will be required to save, defend and indemnify the Port from (i) any claims arising from injuries on Port property or their leasehold as a result of their activities, (ii) any release of hazardous substances on the leasehold (iii) a violation of law by the tenant.
12. Lease enforcement. The leases will contain standard provisions (such as default, termination and attorney fees) to allow the Port to expeditiously enforce the terms of the lease.
13. Holding over. The leases will contain standard language which provides that continuing in possession of a premises after the expiration of a lease (i.e., "holding over") creates a month-to-month tenancy, subject to the same terms and conditions set forth in the prior lease, except that the rent will be increased to 125% of the rate in effect during the month preceding expiration of the lease.

#### **D. MAINTENANCE RESPONSIBILITIES & COSTS**

1. Maintenance responsibilities - Port-owned buildings.
  - a. The Port is responsible for maintaining in good condition the structural parts of the buildings it leases, including the foundations, bearing and exterior walls, subflooring and roofs, the unexposed electrical, plumbing and sewerage systems (including those portions of the systems lying outside the leasehold), exterior doors, window frames, gutters, downspouts, and the ~~heating, and the~~ heating, ventilation and air conditioning (HVAC) systems ventilating and air conditioning system serving such buildings (if any).

- b. Lessees are responsible for maintaining and repairing all interior walls, floors, ceilings, doors, interior and exterior windows and fixtures, and for repairing damage caused to any portion of Port-owned buildings.
2. Maintenance costs – Port-owned buildings. As may be applicable, the Port will schedule and coordinate all HVAC system, fire alarm and suppression system and gutter maintenance and may bill each tenant as part of its common area maintenance fees.

#### **E. CAPITAL IMPROVEMENTS**

Plan for Port-owned improvements. For Port-owned buildings or other improvements, 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.

#### **F. DUE DILIGENCE**

Port staff will conduct due diligence. For new tenants Port staff will conduct appropriate due diligence, which will include gathering financial data concerning the prospective tenants using a standard form developed by Port staff. In addition, for appropriate proposed transactions, Port staff will conduct appropriate additional due diligence (such as site visits, interviews of previous landlords and public records check). Port staff may also conduct appropriate due diligence for significant lease renewals or modifications.

#### **G. OPEN PUBLIC RECORDS**

All records public. All information provided to the Port is subject to the requirements of the Washington Public Records Act (chapter 42.56 RCW). All prospective tenants will be informed that anything submitted to the Port is a public record. If a public records request is made, the Port will notify the party (typically a prospective lessee) submitting the records.

#### **H. 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.

#### **I. REVIEW OF POLICY**

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