

# Port of Port Angeles

*Port Angeles, Washington*

22-1266

## Commissioner's Resolution No.

### RESOLUTION OF THE PORT OF PORT ANGELES LEASE AND PROPERTY USE POLICY.

WHEREAS, under RCW 53.08.080, the Port Commission of the Port of Port Angeles is authorized to lease all lands, wharves, docks and real and personal property owned and controlled by the Port for purposes and upon such terms as the Commission deems proper; and

WHEREAS, state law requires no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years unless the property involved is or is to be devoted to airport purposes; and

WHEREAS, state law permits property involved in being or will be devoted to airport purposes, that the period of the lease may equal the estimated useful life of the facilities, but shall not to exceed seventy-five years; and

NOW THEREFORE BE IT RESOLVED that the Port of Port Angeles Lease and Property Use Policy as set forth in **Exhibit A** attached hereto and by this reference incorporated herein, is adopted for the purpose of establishing the Port of Port Angeles Lease and Property Use Policy, including the standardized lease templates attached as its enclosures.

ADOPTED by the Port Commission of the Port of Port Angeles at a regular meeting thereof held this 23<sup>rd</sup> day of August 2022.

PORT OF PORT ANGELES  
BOARD OF COMMISSIONERS



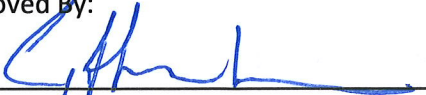
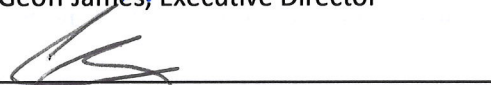
Connie L. Beauvais, President



Colleen M. McAleer, Vice President



Steve D. Burke, Secretary

Approval Required (check box) <input checked="" type="checkbox"/> Commissioners (Policy) <input checked="" type="checkbox"/> Executive Director <input checked="" type="checkbox"/> Director	Approved By:  <hr/> Geoff James, Executive Director  <hr/> Director	Approval Reference Res 22-1266  Effective Date: August 23, 2022
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## I. PURPOSE

The purpose of this policy is threefold. First, this policy provides guidance to staff when negotiating tentative lease terms that will be presented to the Commission, secondly, it creates a framework the Commission shall apply when approving lease terms, and lastly, it establishes the delegated administrative authority of the Executive Director related to leasing matters.

Overall Commission lease goals are to sign long-term agreements, to achieve full rental occupancy, to replace old leases with modern terms and templates, and to attract new tenants who will provide valuable service, jobs, and revenue to the Port.

The Port of Port Angeles holds substantial amounts of land on behalf of the public and frequently long-term leases affect Commissions in future generations. The Port’s responsibility to the people of Clallam County is to manage these properties in a way conforming to public policy and economic development of Clallam County.

Nothing within this lease policy shall prevent the Commission from exercising their powers as authorized in State Statute.

## II. POLICY

### Equitable Treatment

- a) The Port shall treat all tenants and prospective tenants in a fair, equitable, and even-handed manner. No tenant should be given any advantage over any other in the same category in the terms and conditions of leasing Port Property. Market rates should be transparently established and updated regularly, and these rates should drive the rental rates of Port-owned properties.
- b) Anti-discrimination, Americans with Disabilities Act and Political Affiliation. It shall be the policy of the Port that it does not discriminate in its leasing on the basis of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or presence of any sensory, mental or physical handicap. The Port endeavors to comply with the Americans with Disabilities Act (ADA), which is more specifically covered by separate policy. Nor shall any consideration be given to the political affiliation, support of a candidate, or ballot measure when leasing decisions are made.

## Lease Terms

### a) General Lease Terms and Conditions

- i. Any lease of Port property shall be under a written agreement.
- ii. The lease rate for Port property shall be the fair market value for such property.
- iii. The intended use for Port property in any lease shall be expressly stated in the lease and shall be in accordance with the reasonable standards of use for the property.
- iv. The terms of a lease shall adhere to current approved lease templates. Any non-standard terms must be approved by the commission.
- v. Exceptions shall be made for federal governmental contracts that require federal templates. The Executive Director will have the authority to execute leases with federal tenants using federal templates without prior approval of the Commission if the terms contemplated within the lease meet all other requirements of the Port Lease Policies.
- vi. Return on Investment. All improvements completed by the port will require a return on investment by the tenant(s) receiving benefit from said improvement.
  - (1) A payback schedule will be determined on a case-by-case basis.
  - (2) All projects should have a scheduled return on investment until improvement is reimbursed. These should be outlined in an amendment to the existing lease.
- ii) Amendments, Sub-leases and Lease Assignments. Tenants shall not assign a Lease to others nor sublet or license all or any portion of the leased premises without the prior written consent of the Port. Any change of use, or substantial change in ownership will be considered an assignment and must be approved by the Port.
- iii) Leasehold Excise Tax. In addition to paying the base rent, the Lessee shall pay the Port all leasehold excise taxes due and owing on all taxable rent consistent with RCW Chapter 82.29A relating to leasehold excise tax, and any subsequent revision or amendment thereto.
- iv) Common Areas. Any leased areas which also provide common areas such as multiple tenants used parking lots, restrooms, or lobbies shall incorporate the value of these common areas into the base rent charged to the tenants.

### b) Bond/Security

It is the preference of the Commission to obtain appropriate security for Port lease agreements in conformance with RCW 53.08.085. Security for all leases shall be a minimum of three (3) months rental rate unless approved by commission.

However, the Commission acknowledges certain circumstances exist which may justify the Commission's exercise of discretion to waive or reduce the lease security requirement which may be presented to the Commission for consideration, including:

- i. Value of tenant improvements; or
- ii. Security value shortage falls within 20% of current range (due to CPI and other rent adjustments).

During the first quarter of each calendar year, Port staff will advise the Commission of the status of (a) all tenancies for which a lease security waiver was previously authorized by the Commission; (b) all tenancies for which lease security is or may be deficient.

Commission review of lease security waiver/reduction is required if the circumstances related to the decision to waive or reduce the security requirement have materially changed. For example, if a lease rate increases due to CPI, the statutorily required security amount increases by the same amount. Even if the Commission previously waived or reduced a lease security requirement for a tenant in this circumstance, the Commission must determine whether justification for potential loss exposure is still appropriate in light of the increased total security requirement. Another example is if there has been a material change in the condition or value of the tenant improvement which served as the basis for waiving or reducing the security requirement.

c) Term Length

i) Generally:

- (1) Land Lease-All Land Leases shall not exceed an original term of 30 years and two (2) renewals for five (5) years, for a total of forty (40) years.
- (2) Structure Lease- All Structure Leases shall not exceed 20 years and two (2) renewals for five (5) years. A total of thirty (30) years.

ii) Lease Revisions.

Recognizing that many of the older leases of Port property contain provisions resulting in rental rates being less than current fair market rental rates, every effort shall be made to change such leases as the opportunities are presented. Additionally, many leases contain outdated lengthy terms, waived costs, etc. These should also be remedied when possible. Any amendment, new lease agreement, etc. shall be on the most recently approved lease template.

iii) Lease Extensions

All lease extensions and renewals shall be at the sole discretion of the Port unless previously authorized by the commission. At the time of renewal, extension, exercising option, etc. the lease will be reevaluated and brought up to fair market value.

(1) Notice.

Lessee must notify Port in writing at least 90 days in advance of the renewal option period, and the Lessee must have fulfilled completely and timely all the terms and conditions of this lease. Failure of Lessee to give required notification may, at the discretion of the Port, result in the option(s) being null and void.

(2) Holdover

If Lessee remains in possession of said Premises after the date of expiration of the lease without the Port's prior written consent, such holding over shall constitute and be construed as tenancy at sufferance only, at a monthly rent equal to one hundred fifty percent (150%) of the rent owed during the immediately preceding month.

The Lessee will be required to pay to 150% of the rent owed until

- (1) Tenant vacates the premises, or
- (2) Tenant executes a new lease.

d) Lease Rates

i) Establishing Rental Rates.

- (1) Current Rental Rates are depicted in Enclosure A which shall be updated every 5 years:
- (2) Base Rent: All current rental prices take current condition of land, including utility and other infrastructure improvements.

ii) Appraisals. All leases of Port property hereinafter entered for commercial or industrial purposes shall provide that the rate of rental thereof is based upon the Port's most recent appraisal. The Port will conduct a property appraisal at least every five (5) years.

iii) Rental Increases. The rent shall be adjusted each January for years 1-4 to compensate for the effect of inflation on the rental rate. A thirty-day written notice will be given in November to the Lessee that Consumer Price Index adjustments will take place on January 1st. Upon the provision of such notice, the rental rate shall be automatically adjusted every January to reflect the percentage change in the Consumer Price Index for All Items in West - Size Class B/C, All Urban Consumers, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, or the closest comparable index if the above index is no longer published. In January of year 5, and every fifth anniversary thereafter, the rent shall be adjusted in order to compensate for changes in market conditions by an independent appraisal with an estimate of fair market value.

- iv) Any request to amend, sub-lease, or assign a lease which is otherwise satisfactory shall be conditioned by an amendment providing that the rental thereon shall become the prevailing Fair Market Rent. The Port may negotiate a reasonable schedule of periodic adjustments of the rent over a reasonable period of time, if the amount required to reach the Fair Market Rent in the sole discretion of the Port is substantial.
  - v) All tenants who wish to amend, sub-lease, or assign their lease must be in good standing.
  - vi) Good Standing Defined- A tenant in "good standing" is in **FULL** compliance with all obligations in their current or past lease agreements includes inter alia timely payment of rent, adherence to specific terms of lease (property usage, etc.), adherence to property boundaries, promotion of the Port, adherence to local/state/federal rules and regulations, adherence to Port regulations (notification of tenant improvements, permission, notice, etc.), and exercises good faith in its dealings with the Port.
- e) Insurance
- i) General liability of one million per occurrence, and two million in the aggregate.
  - ii) Pollution insurance may be required and determined on a case-by-case basis.
  - iii) Modification of Coverage. Coverage and/or limits may be reduced or increased as necessary at the discretion of the Executive Director, to reflect the type of exposure to risk the activity on the leased premises poses. Insurance policies and subsequent renewals must be maintained in full force and effect, at no expense to the Port.
- f) Nonpayment of Rent
- i) If the tenant fails to pay the required rent as by the lease, the Port shall charge late fees as outlined below. An administrative fee of \$25 will be charged for each month a late or finance fee is charged.
    - (1) 30 days nonpayment = late fee is charged. At the first of month after 30 days late: Late fee is 2% or \$100, whichever is greater, of total outstanding rent, leasehold tax (LHT), utilities and charges billed.
    - (2) 60 days nonpayment = late fee is charged. At the first of month after 60 days late: Late fee is 5% or \$300, whichever is greater, of outstanding rent, LHT, utilities, and charges billed. Notice that Eviction process will be initiated.
    - (3) 90 days nonpayment=eviction enforced.
  - ii) DEFAULT Defined. After 60 days of nonpayment of rent and other monetary obligations, the Lessee is in default. If the Lessee has not cured all obligations within 30 days, the Lease shall be terminated. A fee of Five Hundred Dollars (\$500.00) shall be assessed to Lessee for each Default Notice.

g) Tenant-Owned Buildings

i) Generally.

- (1) Any structures erected upon or added to the leased premises by the Tenant during the term of this Lease, may be removed by the Tenant prior to the expiration of this Lease.
- (2) Any such structures not removed revert to the Port on the expiration of this Lease. However, the Port has the option to decline the acceptance of tenant's structure at the end of the lease.
- (3) If the Tenant removes any part of a structure from the premises, it shall be obligated to remove all thereof, except such portions as the Port may desire to leave remaining, including the foundation. The tenant will correct any environmental issues. The Port may require the Tenant to remove all or any portion of the structures so placed on said premises, provided the Port so notifies the Tenant within 30 days of the expiration of this Lease. In the event any improvements are so removed by Tenant, the premises shall be restored to the condition they were in prior to the construction of such structures.

## Month-to-Month Leases

- a) It is the strong preference of the Commission to execute term leases based on the benefits of predictability of occupancy, stability of lease revenue for the Port, and clarity as to the present and future ownership status of tenant improvements on Port property.
- b) Situations when it is acceptable to enter into month-to-month leases:
  - i) When the Port intends to use the subject property for future planning or other engagements and needs flexibility; or
  - ii) When the term of a tenant lease is unlikely to be for more than 1 year.
- c) Any month-to-month agreement that exceeds one year, will need to be reviewed with the Commission and will require their approval.
- d) During the first quarter of each calendar year, Port staff will advise the Commission on the status of all month-to-month leases and holdover tenancies. Staff will report to the Commission annually on the number of leases and the total amount of potential loss exposure related to waived or reduced security requirements.
- e) If the circumstances require a tenant to only lease on a temporary month-to-month basis, then the base rental rate will be 150% of the current base rent. Special considerations will be made for seasonal or temporary projects.

- f) For month-to-month leases, a minimum of the equivalent of three (3) month's rent shall be collected in advance and held by the Port as a security deposit for the full duration of the leasehold. In addition to the security deposit, the Executive Director may require a damage or cleaning deposit in an amount the Executive Director deems appropriate.

## Special Considerations

### a) Incentives

- i) When Considered. In exceptional cases, the Port of Port Angeles may choose to use incentives to attract new or support expansion of existing tenants. Any lease payment deferral or discounted rate shall be approved publicly by the Commission and shall only be based on:
  - (1) Total number of new employees located in Clallam County based on a report directly from Employment Security Department delivered to the Port within one year of lease execution.
  - (2) The average income of non-C suite employees, based on a report directly from Employment Security Department delivered to the Port within one year of lease execution; or
  - (3) Investment into the Community.
- ii) Structure of Incentives. The Port should strive for consistency within all processes, including incentives. Incentives are primarily negotiated as:
  - (1) Rental discounts – Example below:
    - (a) 1-3 Month s= tenant pays 25% of rent
    - (b) 4-6 Months = tenant pays 50% of rent
    - (c) 7-9 Months = tenant pays 75% of rent
    - (d) 10+ Months = full rent
  - (2) Rental Deferrals.
    - (a) Rental Deferrals refers to rent that is agreed to be paid upon a future date.
    - (b) The rent deferral schedule will be attached as an exhibit to the lease.
  - (3) For all incentives, the tenants will pay the leasehold excise tax on the full amount of rent which they would have paid that month.
- iii) Claw back Clauses. Any incentive provided to a tenant, shall show that all benchmark requirements for the associated incentive has been met by a date established in the lease



terms. If any benchmark has not met, the Commission retains its authority to modify the lease terms and reserves the right to rescind any incentive.

- iv) **Gift of Public Funds.** The Port at all times must abide by Article 8 section 7 of the Washington constitution, "No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm."

Key questions to ask:

- (1) Is the Port receiving something of value for their funds/property/etc.?
- (2) Is the Port receiving a service?

If the answer to both questions is no, then likely incentive is a gift of public funds.

b) Startups

It is in the Port's interest to support entrepreneurs and growing local businesses. When leasing to start-ups the Port shall take the following into consideration:

- i) Does it fall in line with the Port's comprehensive plan?
- ii) Does the organization have a strong business plan?
- iii) Have they invested in their own business?

c) Broker Commission

In circumstances in which a licensed real estate broker (a "Broker") has been engaged by the prospective customer to facilitate a lease or sale of Port property, Port staff is likewise authorized to negotiate with such broker, subject to the terms and conditions of this Policy and final approval of such lease or sale by the Port Commission.

To qualify for receipt of a broker commission fee (a "Broker Fee") from the Port, a Broker must:

- i) Be licensed in the State of Washington.
- ii) Register with the Port as the "procuring cause" of the lease or sale of Port-owned land or buildings prior to or during the first showing of the property; and
- iii) Have provided the Port a fully executed copy of the representation agreement between the Broker and Prospective Customer.

A Broker Fee will be paid to the Broker who is the procuring cause of the lease of Port property and who has registered in accordance with this Policy. The Broker Fee to be paid by the Port will be pre-established for each listed property and will not exceed five percent (5%) of the net

annual base rent for the initial term of the lease not to exceed five (5) years. If the Prospective Customer does not pay rent for any period for which the Broker Fee has been calculated, then the Port will pay only that portion of the unpaid Broker Fee for which rent has been paid.

## REFERENCES:

- a) Delegation of Administrative Authority to Executive Director
- b) RCW 53.08.080 Lease of Property -Authorized duration
- c) RCW 53.08.085 Lease of Property - Security for rent

## ENCLOSURES:

- a) Lease Rates as of July 2022

## Enclosure A

July 2022 Lease Rate Ranges for Port Properties:

	With Access to FIA	General Industrial	Near the Waterfront
Land < ¼ acre with Infrastructure	.10	.10	.10
Acreage near Infrastructure	4356	2000	4356
Acreage with Infrastructure	4356	4356	4356
Buildings	.50	.45	.75