

Friday Harbor Port District Resolution #24-002, Attachment "A"
By the Friday Harbor Port Commission February 23, 2024

A FRAMEWORK FOR, AND ADOPTED POLICIES REGARDING, THE LEASING OF PORT PROPERTY

I. INTRODUCTION & GUIDING PRINCIPLES

The Port shall seek to enter leases with tenants who will, by access to Port property, create:

- (1) living wage, year-around jobs
- (2) local economic growth
- (3) revenue for local, county and state governments, and
- (4) other contributions to our community.

At all times, however, the tenant’s use of Port property shall be mindful of sound business practices and the environmental footprint of the proposed use and infrastructure required to serve that use. The Commission may determine that achieving specific environmental, resilience, recreational or community goals can outweigh the revenue generated or other economic goals.

II. PROCESSES FOR LEASING PORT PROPERTY

A. PROCESS FOR EVALUATING POSSIBLE LEASES OF PORT PROPERTY

STEP 1 – CONCEPT PLAN

For all potential raw land leases, or leases of Port property that contain an improvement, the Port shall receive and review “Concept Plans” from prospective tenants twice annually. Vacated Port owned retail space may be advertised for proposals as they become available and may not be subject to the biannual submission schedule. The plans shall be submitted on or before January 15th and July 15th and shall be posted on the Port website for a minimum of two weeks for public comment. The Commission will evaluate Concept Plans at the first regular meeting in February and August. A Concept Plan shall be in writing and contain, at a minimum, a description of the following:

- 1) the property sought to be leased,
- 2) the nature of the tenant’s intended use,
- 3) why the Port’s property is desired,
- 4) how granting the lease will further the Port’s mission to create living wage jobs,
- 5) the scope and nature of improvements planned for the property, and

- 6) the environmental impacts of the use and possible mitigations for those impacts, if any.

Unless waived by the Port, the Concept Plan shall also include a preliminary site plan that illustrates setbacks, buffers, and impervious surfaces.

Note: Concept Plans missing required elements or submitted after the deadline to allow public comment will not be considered.

At the next regular meeting following the Concept Plan evaluation, the Port Commission shall select which, if any, Concept Plans shall proceed to STEP 2. The Commission will publicly state the reason(s) for choosing one Concept Plan over others when there are multiple proposals for the same property, and why, if applicable, it rejected all Concept Plans.

STEP 2 - LEASE APPLICATION – APPROVED CONCEPT PLAN

Prospective tenants with approved Concept Plans will be granted an exclusive right to commence the Lease Application Process for the identified property, with the mutual intention of entering into a long-term lease agreement.

1. The Port will in writing inform the prospective tenant of the timeline for receiving and reviewing the Lease Application Packet.
2. The Lease Application Packet will, at a minimum, contain:
 - Architectural sketches showing the major design elements.
 - A detailed site plan showing property lines, easements, building placement, access, parking, utilities, landscaping, setbacks, buffers, and impervious surfaces.
 - A description of environmental impacts caused by the proposed use, and mitigation for those impacts, if any.
 - A description of how the project will be financed.
 - A description of the permitting requirements for the project, and a timeline for design, permitting, and construction of the project. These may be incorporated into performance metrics for the lease.
 - The Commission may request information regarding economic development, job creation, and/or periods of operation. These may be incorporated into performance metrics for the lease.
 - The Commission may require an evaluation by the Port Auditor of the financial capacity of the applicant to accomplish the project contemplated in the lease. The financial review will be appropriate to the tenant and may include any or all of the following: credit report, Dunn and Bradstreet report, financial statements, tax returns, or such other information the Port Auditor deems necessary. The Auditor will examine and return hard copies of any financial data requested.

- If the Port Auditor does not recommend approval, then the prospective tenant will have the opportunity to address the Commission at a regular Port Commission meeting and request reconsideration.
- A statement of what, if any, incentives the prospective tenant is seeking/requiring.

STEP 3 – APPROVED LEASE APPLICATION

If the Port Commission approves the Lease Application, then the parties will negotiate the remaining lease components. The first step in this process is the Port staff preparing a lease that sets forth the parties mutual understanding of the agreed upon terms and conditions. If a final agreement is obtained, the lease shall be signed by the executive director or Port Commission as appropriate.

III. GENERAL POLICIES REGARDING RENT

A. RENT AMOUNT

Rent rates for unimproved land leases shall be based on the Port’s adopted rate of return and the market value of the bare land based on appraisals. The value of any Port improvements to Port lands (e.g., roads, utilities, common areas) may be recovered in any combination of rents based on improved land values or payments of a proportionate share of the infrastructure cost.

Rental rates for Port owned buildings shall be established using a rent determination appraisal or market survey as determined by the Commission or Director based on the delegated authorities.

B. RENT ADJUSTMENTS

The following shall apply to rent adjustments:

1. Annual CPI Adjustment: rents shall be adjusted annually based on the Consumer Price Index for all U.S. City Average; All Urban Consumers published by the United States Department of Labor Bureau of Labor Statistics for the Seattle-Tacoma-Bellevue Metropolitan area.
2. In addition to an Annual Adjustment, the Base Rent shall be subject to periodic adjustment every fifth (5th) year, on a Port wide- cycle chosen at the discretion of Port, based on an MAI certified appraisal.
3. Month-to-Month Leases: Rates applying to all month-to-month leases shall be adjusted annually on January 1st. This may be done by CPI adjustment, fair market value or other appropriate means of establishing the reasonable rent.

IV. GENERAL POLICIES REGARDING THE TERM OF LEASES

A. LAND LEASE

Initial Term and Extensions:

1. The initial term plus extensions for those leases where the tenant constructs, at tenant's expense, a typical industrial building (e.g., hangars, storage, or retail buildings) will not exceed forty (40) years.
2. The initial term plus extensions for proposals having an investment lower than a typical industrial building will be determined on a case-by-case basis. Lower investment and/or low community benefits will result in shorter lease terms.

B. BUILDING LEASE

1. Initial Term Plus Extensions. The initial term plus extensions may be up to thirty (30) years and will be determined according to the needs of the tenant, design standards of improvements, useful life of the improvements, the generation of economic value to the community, and future needs of the Port.
2. Requests to extend beyond the original initial term and extensions for building leases will be processed as a new lease and may include requirements to make upgrades extending the useful life of the building and/or improvements, demonstrate the remaining useful life of the building and/or improvements, or demonstrate the generation of economic value to the community, and future needs of the Port.

V. GENERAL POLICIES REGARDING NEW LEASES FOR EXPIRING LAND LEASES

1. Requests to extend beyond the original initial term and extensions for land leases with existing tenant-built improvements will be reviewed concurrently with those Lease Applications received in Section III above. Extensions beyond the original terms will only be processed as a new lease.
2. A new lease will only be considered in the final extension period of the lease or concurrent with a substantial new investment.
3. The new lease shall be at the sole discretion of the Port Commission. Proponents shall submit detailed information on the following which shall be considered by the commission.
 - The remaining useful life of the improvements.
 - Upgrades to the improvements.
 - Heightened energy efficiency standards and sustainability upgrades.
 - Whether the property is part of a redevelopment or change of use plan adopted by or under consideration by the Port.

4. The term of the new lease will be contingent upon the amount of investment and useful life of the structure.
 - Example 1: A full rebuild could receive up to a 25-year term with 3, 5-year extensions.
 - Example 2: A new roof and siding could receive up to a 25-year term with no extensions.
 - Example 3: Minimal upgrades would receive shorter terms based on the useful life of the structure.

VI. GENERAL POLICIES REGARDING TERMINATION OF LEASE

At the termination of the lease, the Port has the right to require the tenant to remove all tenant constructed improvements at the tenant's expense or, if consented to by the Port, leave the improvements in place with them becoming Port property.

VII. GENERAL POLICIES REGARDING RENT ABATEMENT

The Port may consider rent abatements for leases proposing substantial investments, extended permitting periods, and/or significant construction. The abatement terms and durations are made on a case-by-case basis but will not exceed 50% for a total of 18 months.

VIII. GENERAL POLICIES UNDERLYING ALL PORT LEASES

A. VALUATION

At five-year intervals, the Port will evaluate the market values of all Port-owned buildings to determine the lease rates for each marketable building.

B. PORT CONSTRUCTED TENANT IMPROVEMENTS

The Port will consider constructing tenant improvements or constructing a building for a tenant and amortize that cost over the term of the lease or longer. Please see the incentives section below.

C. MAINTENANCE COSTS

Port-owned buildings:

The Port will schedule and coordinate all landscape, storm water, parking lot, and exterior maintenance, and selected mechanical systems maintenance. Tenants may be billed a common area maintenance fee, or the costs associated with these activities may be incorporated into the base rent, as negotiated between the parties.

Land leases:

The Port will generally not assume any responsibilities or costs for maintenance associated with land leases.

D. 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 overall operating and capital improvement budgets annually.

E. USE

The Port will seek to limit the use on its leaseholds to a specific purpose. Leases that provide for "all use allowed by zoning" or "all legal uses" will not be approved.

F. INCENTIVES

Absent a compelling reason, the Port will refrain from providing incentives to tenants. To attract or support tenants that will help the Port fulfill its mission, the Port may, however, use lease incentives. Incentives, which can be proposed by the potential tenant or Port, can include long-term leases, rent adjustments, profit sharing, Port construction of tenant's improvements or any other negotiated incentive approved by the Commission. Additionally, targeted incentives may be offered to incubators, startups, business relocations, or projects that provide a substantial community benefit.

G. PROFIT SHARING AGREEMENTS

On selected properties that extend competitive advantages to the Lessee, the Port may prefer leases that share revenue in a way that provides financial incentives to the lessee as well as gives financial advantages to the Port. The details of these rent plus profit sharing leases are negotiated on a case-by-case basis.

H. STANDARD LEASE PROVISIONS

Lease conditions vary from tenant to tenant. Good business practice and state statutes require certain lease provisions defining requirements such as rent, lease bonds or deposits, payment of leasehold and other taxes, indemnification and hold harmless, environmental protections, the Port's right of entry for inspection, maintenance of the premises, fixtures and equipment, liability and casualty insurance, retention of air rights, FAA requirements, condemnation, default, costs and attorney fees, notices, waivers, utility services, month-to-month tenancy and

holding over, termination of lease, and others. All leases will be executed using a template form provided by the Port's legal counsel.

I. ASSIGNMENT/MODIFICATION

It is the policy of the Port to prohibit any assignment or sublease by a tenant without the prior written consent of the Port. Approval will not be unreasonably withheld. The Port may deem it reasonable to make assignments contingent upon requiring updated lease language as provided by Port legal counsel, payment of currently adopted transfer fees, and updated rents based on Port's adopted rate of return at the time of the transaction.

The Commission may grant permission to modify an existing land lease. The Commission may include in the approval the condition to replace the original lease with a contemporary land lease template as provided by the Port's legal counsel and bring the lease into conformance with other current Port policies and rates.

J. STRUCTURAL CHANGES

Structural changes to buildings require the prior written consent of the Port. 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 upon termination of the lease.

K. 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 usually in the amount of not less than \$2,000,000. Depending on the nature of the business, additional insurance coverages and amounts may be required.

L. RENT SECURITY

The Commission considers three months' rent, including leasehold excise tax, as adequate rent security for all leases.

M. BONDING

Leases entered into by the Port that support the issuance of municipal bonds may require various special clauses to address the particular issues involved in the bond. Such clauses would be provided by the bond counsel.

N. CONSTRUCTION SCHEDULE

All land or building leases that require construction or remodeling may include a time schedule for the completion of the improvements. Failure to meet the completion requirements may be grounds for terminating a lease.

O. OPEN PUBLIC RECORDS

All information provided to the Port is subject to the requirements of open public records laws.

P. ENVIRONMENTAL ISSUES

Careful consideration must be given to the tenants proposed use to determine: whether any hazardous wastes might be generated by the use, the potential environmental hazards created, the extent of the wastes, and the ease with which the wastes can be disposed.

IX. VARIATION FROM POLICY

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

X. ETHICS AND CONFLICTS OF INTEREST

The Code of Ethics for Municipal Officers is Ch. 42.23 RCW (the "Act"). The Commission of the Port of Friday Harbor review and execute leases in conformance with the requirements of this Act.

XI. REVIEW OF POLICY

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