

STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: June 25, 2020

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Adopt retail/commercial leasing strategy to respond to COVID-19 impacts to tenancies that, among other things, authorizes TJPA staff to negotiate certain lease amendments consistent with the strategy, subject to TJPA Board of Directors approval and applicable Board-approved budget.

EXPLANATION:

Background

In March 2017, the TJPA Board authorized an Asset Management Agreement (AMA) with a team led by Lincoln Property Company (Lincoln) for the transit center. Lincoln is overseeing the management of the transit center. Lincoln and its team member Colliers International (Colliers) are managing the retail/commercial leasing of the transit center.

In July 2017, the TJPA Board approved a Retail Merchandising Plan (Merchandising Plan), and authorized Lincoln and Colliers to begin marketing and negotiations for retail leasing generally consistent with the plan.

In October 2017, the TJPA Board approved a Retail Leasing Policy (Board Policy 018), which outlined the objectives of our leases to private parties and defined the generally acceptable terms and conditions of leases and authorities of the Executive Director in accepting such leases.

Since that time, the TJPA has entered into 18 leases for retail/commercial space in the transit center. Four of those 18 locations were open for business in March 2020.

On March 16, 2020, the City and County of San Francisco issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes coronavirus disease (COVID-19).

Since the original Shelter-in-Place Order was issued, subsequent orders have been issued by the City and County of San Francisco updating and supplementing the original order. The TJPA anticipates that future orders may be issued, guiding the City to recovery (collectively, “Health Orders”).

The transit center’s previously operating retail/commercial tenants have notified the TJPA that the Health Orders have had direct and indirect negative impacts on their operations and finances, including their ability to pay rent. The TJPA has no control over the Health Orders. The transit center tenants have made certain commitments through their leases. There may be opportunities for the tenants to mitigate the impacts of the Health Orders, including through federal, state and local loan and grant programs developed in response to COVID-19. The TJPA also has a

responsibility to ensure the fiscal health of the agency and its operations so that it may continue to serve its mission as essential public transit infrastructure. Nonetheless, for the reasons outlined herein, it is in the TJPA's and public's interest to maintain strong retail/commercial tenancies over the long term at the transit center. Consistent with anticipated approaches to be taken by TJPA's sister agencies, it is prudent for TJPA to adopt a mitigation strategy that can be deployed as appropriate in response to expressed tenant concerns and in partnership with the tenants.

Retail/Commercial Leasing Strategy to Respond to COVID-19 Impacts to Tenancies

It is in the public's best interest, and that of the TJPA, the facility and all of our partners to keep our retail/commercial tenancies viable, as they provide a) long-term space activation; b) critical long-term revenues; and c) needed services for the neighborhood, our visitors and commuters. Consideration of appropriate fiscal relief to retail/commercial tenancies negatively affected by COVID-19, particularly to prevent closures and deactivation of our retail/commercial space, is therefore a strategy aligned with that public interest.

This strategy is specific to an intervening, short-term and unique impact of COVID-19 on retail/commercial tenants, and while aligned with Board Policy 018 (Retail Leasing Policy), it is not appropriate nor necessary for the strategy to be an amendment to that Policy. The strategy is not more broadly applicable to other existing contracts and arrangements, and the TJPA does not intend to consider mitigations for other adverse impacts retail/commercial tenants may experience in the normal course of business.

The proposed mitigation strategy may include consideration of any or all of the following relief options:

- Rent relief (full or partial; temporary deferral with repayment or permanent)
- Date/Term adjustments to lease
- Expanded outdoor use allowances

Eligibility for relief options will be based on factors including but not limited to the following:

- Financial resources of tenant
- Number of facilities operated by tenant
- Availability of and level of effort in securing alternative sources of grant or loan funds
- Opportunities for partial or full resumption of operations under applicable orders by the City and County and State
- Cost implications of conforming with federal, state and local requirements and best practices upon resumption of operations
- Net revenue opportunities presented by partial operations

Application of relief options will be on a case-by-case basis, supported by documentation of impacts, and evaluated on an equitable and objective perspective. Any relief will be conditioned on tenants' compliance with all other terms and conditions of the lease.

RECOMMENDATION:

Adopt a retail/commercial leasing strategy to respond to COVID-19 impacts to tenancies that, among other things, authorizes TJPA staff to negotiate certain lease amendments consistent with the strategy subject to TJPA Board of Directors approval; and all lease amendments must be consistent with the applicable Board-approved budget at the time submitted.

ENCLOSURES:

1. Proposed Retail/Commercial Leasing Strategy
2. Resolution

Retail/Commercial Leasing Strategy to Address COVID-19 Impacts

This mitigation strategy is expected to be deployed, as appropriate, in response to concerns expressed by retail/commercial tenants regarding the direct and indirect impacts of COVID-19 and associated health orders on lease terms and conditions.

The City and County of San Francisco first issued a shelter in place order on March 16, 2020 (“Original Order”), to facilitate the reduction of the impact of the virus that causes coronavirus disease 2019 (“COVID-19”). The Original Order generally required everyone to stay safe at home except for certain essential activities and work to provide essential businesses and government services or perform essential public infrastructure construction. The Original Order impacted many facets of the operations at the Salesforce Transit Center and Salesforce Park. The Original Order has since been replaced by subsequent orders (collectively, “Subsequent Orders”) progressively relaxing restrictions and allowing limited resumption of business, further such orders are anticipated in the future.

The TJPA has received requests from retail/commercial tenants for financial relief from direct or indirect impacts on their business from the Original Order and/or Subsequent Orders, or if tenant improvements are under construction or design, from negative impacts on those processes. The relief requests stem from either a stated inability to open their place of business, or a stated inability to feasibly operate their business and generate sufficient income to cover expenses due to reduced clientele and increased costs of doing business in conformance with applicable public health guidance. Similarly, retail/commercial tenants have identified construction / design / permitting delays of various types, some directly related to the Original Order and Subsequent Orders, and some indirectly related.

The TJPA has no control over the Original and Subsequent Orders. The transit center tenants have made certain commitments through their leases. There may be opportunities for the tenants to mitigate the impacts of the health orders, including through federal, state and local loan and grant programs developed in response to COVID-19. The TJPA also has a responsibility to ensure the fiscal health of the agency and its operations so that it may continue to serve its mission as essential public transit infrastructure.

Nonetheless, it is in the public’s best interest, and that of the TJPA, the facility and all of our partners to keep our retail/commercial tenancies viable, as they provide a) long-term space activation; b) critical long-term revenues; and c) needed services for the neighborhood, our visitors and commuters. Consideration of appropriate fiscal relief to retail/commercial tenancies negatively affected by COVID-19, particularly to prevent closures and deactivation of our retail/commercial space, is therefore a strategy aligned with that public interest.

The strategy outlined herein affords fair and reasonable mitigation strategies for certain negative impacts to our retail/commercial tenants from the Original Order and Subsequent Orders, and requires TJPA Board of Directors approval effectuating appropriate lease modifications in conformance with this strategy, and in alignment with the Board’s adopted budget assumptions.

Rent Relief and Other Concessions Due to Business Interruption caused by the Orders

- ✓ Existing retail/commercial tenants open for business prior to the issuance of the Original Order, that entirely or substantially ceased operations as a result of the Original Order, may be eligible for up to 100% rent relief or other concessions for the period from the effective date of the Original Order until the date when operations are permitted to partially or fully resume (e.g., because the Original Order and Subsequent Orders expire or otherwise end, or are replaced).
- ✓ Retail/commercial tenants that made or make substantial changes in operations as a result of the Original Order and/or Subsequent Orders, may be eligible for partial rent relief or other concessions for the period from the effective date of such order.

Determinations regarding the eligibility for and amount/type of relief would be at the discretion of TJPA staff, subject to ratification by the TJPA Board, on a case-by-case basis, based on a number of factors including (but not limited to) the financial resources of the tenant; number of retail/commercial facilities operated by tenant; availability of and level of effort in securing alternative sources of funds (whether grants or loans) and employing other mitigating strategies; opportunities for partial resumption of operations under the Original Order and/or Subsequent Orders; cost and other implications of conforming with federal, state, and local requirements and best practices upon resumption of operations; and net revenue opportunities that such partial operations create. Relief may be temporary or permanent, depending upon the particular tenant circumstances. Relief may include waiver of rent, deferral of rent with payment plans over several months, or other measures such as adjustments to the term of lease.

Tenant requests for relief must be supported by appropriate documentation of impacts. TJPA evaluation of eligibility for and type of relief will be made on an equitable and objective basis. Any relief will be conditioned on tenants' compliance with all other terms and conditions of the lease.

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, In March 2017, the TJPA Board authorized an Asset Management Agreement (AMA) with a team led by Lincoln Property Company (Lincoln) for the transit center. Lincoln and its team member Colliers International (Colliers) are managing the retail/commercial leasing of the transit center; and

WHEREAS, In July 2017, the TJPA Board approved a Retail Merchandising Plan (Merchandising Plan), and authorized the team to begin marketing and negotiations for retail leasing generally consistent with the plan; and

WHEREAS, In October 2017, the TJPA Board approved a Retail Leasing Policy which outlined the objectives of our leases to private parties and defined the generally acceptable terms and conditions of leases and authorities of the Executive Director in accepting such leases.

WHEREAS, On March 16, 2020, the City and County of San Francisco issued a shelter-in-place order to facilitate the reduction of the impact of the virus that causes coronavirus disease 2019 (“COVID-19”), and that order generally required everyone to stay safe at home except for certain essential activities and work to provide essential businesses and government service or perform essential public infrastructure construction; and

WHEREAS, TJPA staff have received requests from retail/commercial tenants for financial relief from direct or indirect impacts on their business from the health orders; and

WHEREAS, It is in the public’s best interest and that of the TJPA, the facility and all of our partners to keep our retail/commercial tenancies viable, as they provide a) long-term space activation; b) critical long-term revenues; and c) needed services for the neighborhood, our visitors and commuters. Consideration of appropriate fiscal relief to retail/commercial tenancies negatively affected by COVID-19, particularly to prevent closures and deactivation of our retail/commercial space, is therefore a strategy aligned with that public interest; and

WHEREAS, A retail/commercial leasing strategy (“Strategy”) to respond to COVID-19 impacts to tenancies has been developed by TJPA staff to ensure fair, consistent and transparent review and processing of tenant requests for financial or lease term relief; now, therefore, be it

RESOLVED, That the TJPA Board of Directors adopts the Strategy; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes TJPA staff to negotiate certain lease amendments as deemed reasonably necessary to implement and effectuate the Strategy, subject to TJPA Board of Directors approval and applicable Board-approved budget.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 25, 2020.

Secretary, Transbay Joint Powers Authority