

**ORDINANCE NO. 2009-01**

**AN ORDINANCE ESTABLISHING COMMON PROCEDURES FOR COLLECTION OF PAST DUE AMOUNTS; ESTABLISHING COMMON PROCEDURES FOR DEFAULTS UNDER LEASES WITH THE PORT; PROVIDING FOR UNLAWFUL POSSESSION OF PORT PROPERTY, NOTICE AND PENALTY THEREFOR; PROVIDING FOR ALTERNATIVE PROCEDURES FOR RESIDENTIAL TENANTS; PROVIDING FOR ECONOMIC DOWNTURN AND LOCAL DISASTER MORATORIUM; PROVIDING FOR NO RIGHTS OR REMEDIES CREATED; PROVIDING FOR APPLICATION TO FUTURE AND PRESENT CONTRACTS; PROVIDING FOR A DE MINIMUS EXCEPTION; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND REPEALING PORT LAWS AND POLICIES REGARDING SAME.**

**WHEREAS**, the Port of St. Helens is a Port district established under Chapter 777 of Oregon's Revised Statutes; and

**WHEREAS**, among its legal authority, the Port, through its Board of Commissioners, may lease property, enforce leases, and settle, compromise, or adjust disputed claims; and

**WHEREAS**, the Port owns and manages real property throughout Columbia County on behalf of the district residents; and

**WHEREAS**, the Board agrees to lease those public lands to effectuate the Port's mission statement, which is to improve the Port's financial return and create jobs, among other things; and

**WHEREAS**, the Board finds that in order to be the best stewards of the public lands to which it is entrusted, the Board must ensure that leases are readily enforced and that monies owed to the Port, and in effect, to the district residents, are collected; and

**WHEREAS**, the Board finds that in order to accomplish these duties, it must provide for common procedures to direct staff and to inform lessees and debtors; and

**WHEREAS**, the Board finds that while different situations lead to defaults in leases and past due amounts, common procedures will ensure that no tenant or debtor will be treated preferentially over the next one; and

**WHEREAS**, the Board is desirous that these procedures be used sparingly, with the hope that every counterparty abide by its lease and contact and work with the Port before defaults and debts occur; and

**WHEREAS**, the Board recognizes that it has entered into contracts with counterparties under specific terms and conditions, which may not be abrogated unilaterally by ordinance; and

**WHEREAS**, the Board finds that these common procedures will be effective only to the extent they exercise rights available to the Port through these agreements, and will not act to diminish the contractual rights of the counterparties; and

**WHEREAS**, the Board intends to establish these common procedures because they are in the best interest of the district residents and in keeping with the mission statement set forth by the Board; and

**WHEREAS**, the Board recognizes that residential tenants are governed by state law; and

**WHEREAS**, the Board has devised common procedures which exclude conflicts with the state residential tenancy laws; and

**WHEREAS**, the Board has devised and approved these common procedures only after determining the facts and the costs and benefits of implementing them and after evaluating the relative effectiveness and risks and competing goals and priorities of doing so; now, therefore,

**BE IT ORDAINED** by the Board of Commissioners of the Port of St. Helens as follows:

**Section 1. Short Title.** This ordinance shall be referred to as the “Default and Collections Ordinance”.

**Section 2. Collections Procedure.** The Port shall hereby utilize the following procedure to collect past due amounts:

**2.1 Definitions.**

**2.1.1 Counterparty.** “Counterparty” is any person or business who entered into a contract, including a lease, with the Port. A tenant is a counterparty. In that sense the two terms are interchangeable.

**2.1.2 Past Due.** “Past Due” means any amount that a counterparty owes the Port which is not paid within the time specified in the contract with the Port. It includes, among other things, basic rent, adjusted rent, insurance pass-through payment, tax pass-through payment, improvement cost, late fees, interest, usage fee, and security deposit.

**2.1.3 Reasonable Business Judgment.** “Reasonable Business Judgment” as defined in this Section means a determination which is made after considering at least the following factors:

- (1) *Cost.* The cost of pursuing collections as compared to foregoing collections; and
- (2) *Delinquency.* The amount of time that has transpired since the amounts due were first unpaid; and
- (3) *Legal Defenses.* The potential legal defenses to the non-payment of amounts due to the Port; and
- (4) *Special Facts.* Any special facts or circumstances concerning the non-payment of the amounts due; and

- (5) *Contract Terms.* The terms and conditions of the particular contract or contracts; and
- (6) *Private/Public Customs.* Other considerations that are customarily employed by other private and public corporations dealing with similar issues; and
- (7) *Public Interest.* A reasonable assessment of the public interests presented in each case.

**2.2 Interest Shall Accrue.** The Executive Director, or his designee, shall add to all past due amounts the lesser of: (1) the maximum interest rate allowed by law or (2) the maximum interest rate allowed by the counterparty's contract. Unless otherwise prohibited in the individual contract, the interest shall accrue on past due amounts automatically beginning the first day the amount is past due and shall continue until the past due amount is paid or otherwise settled as provided for in this Section.

**2.3 Statements No Defense.** Unless a contract otherwise provides for the Port to invoice amounts due, a counterparty may not use the failure of the Port to invoice amounts due or the accuracy of invoices sent as a defense against monies owed the Port for any purposes under this Section.

**2.4 Determination of Past Due Amounts.** When a counterparty has an apparent past due amount, the Executive Director, or his designee, shall direct the Port's financial manager to determine the extent of the apparent past due amounts under each contract the counterparty has entered into with the Port and ascertain the factual circumstances attendant to the apparent failure to pay.

**2.4.1 Determination of Facts Unclear and Reasonable Dispute.** If the determination of facts is not clear:

(1) *Contact Counterparty to Determine if Reasonable Dispute Exists.* The Executive Director, or his designee, shall contact the counterparty to determine if there is a reasonable dispute as to the apparent failure to pay.

(2) *Staff Determination.* After contacting the counterparty, the Executive Director, or his designee, may make a finding, in writing, that there is a reasonable dispute as to the apparent failure to pay.

(3) *Result of Written Finding.*

(a) *If Finding of Reasonable Dispute.* If a reasonable dispute finding is made, the apparent past due amounts are not to be considered "past due", and if applicable, shall not be used to support a default subject to Section 3, Default Procedure, except as provided for in subsections (4) or (8).

- (b) *If Finding of No Reasonable Dispute.* If no reasonable dispute finding is made, the Executive Director, or his designee, shall follow the procedures set forth in Section 2.4.2 to collect the past due amounts owed.
- (4) *Finding may be Revoked, Result.* The Executive Director, or his designee, may revoke a reasonable dispute finding, in writing, at any time prior to the Board's determination pursuant to subsection (6) if facts present themselves that no reasonable dispute exists. After revoking the finding, the Executive Director, or his designee, shall follow the procedures set forth in Section 2.4.2 to collect the past due amounts owed.
- (5) *Board Presentation of Reasonable Dispute Finding.* Within sixty (60) calendar days of making a reasonable dispute finding, the Executive Director, or his designee, shall present before the Board a recommendation to address the amount in dispute.
- (6) *Board Determination.* The Board shall determine if:
- (a) *No Reasonable Dispute.* There is no reasonable dispute; or,
  - (b) *Reasonable Dispute.* There is a reasonable dispute.
- (7) *If Board Determines Reasonable Dispute, Settlement.* If the Board determines there is a reasonable dispute, then the Board shall instruct the Executive Director, or his designee, to bring a recommendation back to the Board to settle the amounts owing within thirty (30) calendar days. A determination of a reasonable dispute in this Section 2.4.1 is only recognition of the potential for a reasonable dispute and the appropriate process to explore alternative solutions in light of that potential. It does not constitute a quasi-judicial decision on the merits or a concession by the Port that a dispute actually exists or a waiver of any rights of the Port to assert that payment of the full apparent past due amount is actually due.
- (8) *If Board Determines No Reasonable Dispute, No Settlement Reached, or Settlement Breached, then Collections.* If the Board determines there are amounts owed that are not in dispute, or the Board does not approve a settlement within the thirty (30) day period required for a recommendation, or if a counterparty fails to enter into or breaches an approved settlement agreement, then the Executive Director, or his designee, shall follow the procedures set forth in Section 2.4.2 to collect the past due amounts owed with no reasonable dispute.

**2.4.2 Determination of Facts Clear or No Reasonable Dispute Finding.** If the determination of facts is clear or, if no reasonable dispute finding exists pursuant to Section 2.4.1, above, then the amount shall be considered "past due" for purposes of collection, and if applicable, for purposes of

determining a default subject to Section 3, Default Procedure.

## **2.5 Demand Letter.**

**2.5.1 Notify Counterparty.** Upon a finding of past due amounts, the Executive Director, or his designee, shall notify the counterparty and make a demand to bring the amounts current in accordance with the terms and conditions of each contract, within fifteen (15) calendar days of receipt of demand, or within such other time as set forth in the counterparty's contract, whichever is greater.

**2.5.2 Notice to Include Ordinance.** The demand notice shall include a copy of this ordinance and any amendments to it.

**2.5.3 If Applicable, Notice to Include Notice of Default.** If the past due amounts are part of a default, which is addressed in Section 3, Default Procedure, then the demand shall be included in the Notice of Default required by Section 3.2.

**2.5.4 Notice Language.** In all cases, the demand shall be in substantially the same format, as below, and shall be sent via certified mail and in accordance with any procedures set forth in the counterparty's contract:

"Pursuant to Ordinance 2009-01, and in accordance with the provisions of your contract [or contracts] with the Port, be advised that you have past due amounts owed to the Port. Remit \$[amount owed] to the address listed on the letterhead, above, in order to bring the amounts current in accordance with the terms and conditions of your contract [or contracts]. Further action in accordance with Ordinance 2009-01 will be taken if full payment is not received within fifteen (15) calendar days [or other time as set forth in counterparty's contract] of this letter. Interest is accruing."

**2.6 Refusal to Pay.** Except as provided for in Section 2.7, below, if the counterparty refuses to pay or ignores the demand to pay the past due amounts in full within the time allotted in Section 2.5, then the Board must exercise its reasonable business judgment and make a reasonable effort to collect the amounts due, unless the costs of collection or suit would clearly exceed the reasonably estimated amounts due to the Port, by following the procedures set forth in this Section.

### **2.6.1 Presentation to Board.**

(1) *Period for Board Consideration.* After fifteen (15) calendar days from the demand letter's expiration date, or if applicable, after fifteen (15) calendar days of termination of a lease pursuant to Section 3.3 of the Default Procedure, whichever is later, the Board shall consider a recommendation, as outlined, below, at its next regular meeting.

(2) *Stay.* If applicable, the meeting specified in Section 2.6.1(1), above, may be stayed pursuant to new lease negotiations in accordance with

### Section 3.4.2.

- (3) *Staff Report and Recommendation.* At the meeting specified in Section 2.6.1(1), above, the Executive Director, or his designee, shall report to the Board the outstanding balance owed by the counterparty and address each of the factors to be considered in determining "Reasonable Business Judgment", as defined by Section 2.1.3. Based on those factors, the Executive Director, or his designee, shall recommend approval of a settlement, adjustment, or compromise or other agreement to address the past due amounts or approval to send the amounts to final collections.

### 2.6.2 Decision by the Board.

- (1) *Board Determination.* At the meeting specified in Section 2.6.1(1), above, the Board shall determine if in its Reasonable Business Judgment it will (1) approve or (2) reject the recommendation of the Executive Director, or his designee.
- (2) *Board Rejects Recommendation, Alternative Required, Subsequent Board Meeting.* If the Board rejects the recommendation, it shall instruct the Executive Director, or his designee, on an acceptable alternative to recommend at a subsequent Board meeting, which Board meeting shall be held not later than thirty (30) calendar days following the initial recommendation by the Executive Director, or his designee, or, if applicable, ninety (90) calendar days following termination of a lease pursuant to Section 3.3 of the Default Procedure, or ninety (90) calendar days following a failure to negotiate a new lease pursuant to Section 3.4.2, whichever of the three possibilities is later.
- (3) *Subsequent Board Meeting – Staff Recommendation.* At the subsequent Board meeting, as provided for in Section 2.6.2(2), above, the Executive Director, or designee, shall provide a recommendation on the acceptable alternative to the Board.
- (4) *Subsequent Board Meeting – Board Determination.* At the subsequent Board meeting, as provided for in Section 2.6.2(2), above, the Board shall (1) approve the acceptable alternative, or (2) approve the initial recommendation of the Executive Director, or designee, or (3) place the past due amounts in final collection. If no decision is made within the time provided for in subsection (2), above, then the past due amounts shall be placed in final collections.

### 2.6.3 Failure to Follow-Through on Settlement.

- (1) *Notice of Default.* If a counterparty breaches any agreement approved by the Board pursuant to subsection 2.6.2, the Executive Director, or his designee, shall send a Notice of Default to the counterparty, who shall have three (3) business days to conform to

the requirements of the agreement.

- (2) *Failure to Cure, Final Collections.* If the counterparty fails to cure the breach, the Executive Director, or his designee, shall place the past due amounts, with interest, in final collection.

## **2.7 Administrative Settlement.**

**2.7.1 Under \$5,000, Authority to Send to Final Collections.** For past due amounts under five thousand dollars (\$5,000), the Executive Director, or his designee, may exercise reasonable business judgment without any discriminatory or preferential treatment to send the past due amounts to final collection.

**2.7.2 Period to Exercise Authority.** The Executive Director, or his designee, must make the decision provided for in Section 2.7.1 before the date of the next regular board meeting following the later of: fifteen (15) calendar days from the demand letter's expiration date, or if applicable, following fifteen (15) calendar days of termination of a lease pursuant to Section 3.3 of the Default Procedure. If a decision is not made before then, or if the Executive Director, or his designee, decides not to send the past due amounts to final collection, then Section 2.6 shall apply.

## **2.8 Final Collection.**

**2.8.1 Definition.** Final collection shall consist of immediately sending the past due amounts either to a collections agency or to the Port's attorney to pursue all rights and remedies under the law and under the agreement with the counterparty.

**2.8.2 Determination – Collections Agency or Legal Remedy.** The Executive Director, or his designee, after consulting with the Port's attorney, shall determine whether to send the amounts due to a collections agency or to the Port's attorney, by determining which of the two actions would provide the Port with the largest return on the amounts owed after weighing the cost of collection under both methods.

**Section 3. Lease Default Procedure.** The Port shall hereby implement the following procedures with regards to Port tenants who are in default:

### **3.1 Definitions.**

**3.1.1 Default.** "Default" in this ordinance means the failure to perform under the terms of a lease with the Port. It is more specifically defined in the individual lease and the definition provided in that individual lease is controlling. An apparent past due amount held to be reasonably in dispute, as provided for in Section 2.4.1, shall not be considered a "default" for the purposes of this section so long as the reasonable dispute finding exists.

**3.1.2 Lease.** "Lease" in this Section 3 shall not mean valid licenses and

permits executed or issued by the Executive Director, or his designee, on behalf of the Port.

**3.1.3 Termination.** "Termination" of a lease shall mean an action by the Port to consider a lease in default ended for failure to cure the default, as provided for in Section 3.3. Termination does not mean, by itself, an election to end a holdover period or to evict a holdover tenant, for purposes of this ordinance.

## **3.2 Notice of Default.**

**3.2.1 Notify Tenant.** No later than five (5) business days after the default of a lease occurs, the Executive Director, or his designee, shall send a "Notice of Default" to the tenant to cure the default within fifteen (15) calendar days, or such other time as defined in the lease, whichever is greater, from receipt of the notice.

**3.2.2 Notice to Include Ordinance.** The Notice shall include a copy of this ordinance and any amendments to it.

**3.2.3 If Applicable, Notice to Include Demand Letter.** If the default occurs because of past due amounts, as determined according to Section 2.4, the Notice shall include demand language as set forth in Section 2.5.

**3.2.4 Notice Language.** In addition to any past due demand language that may apply, the Notice shall be in substantially the same format, as below and sent by certified mail and in accordance with any procedures set forth in the tenant's lease:

"In accordance with Ordinance 2009-01, and in accordance with the provisions of your lease [or leases] with the Port, you are hereby notified that you are in default of your lease [or leases]. You must cure the default [or defaults] listed below within fifteen (15) calendar days [or such other time as defined by the lease] of receipt of this notice. [List Default or Defaults] Failure to cure the default [or defaults] may lead to termination of your lease [or leases] in accordance with Ordinance 2009-01. This Notice includes a copy of that ordinance."

## **3.3 Failure to Cure Default.**

**3.3.1 Lease Terminated Unless Other Obligations or Overriding Interest, Holdover.** In the event that the tenant fails to cure the default within the fifteen (15) day period, or longer period, as required by the lease, and if there are no other Port obligations preventing termination, as described in Section 3.3.3, below, and if there is no overriding interest, as provided for in Section 3.3.4, below, the lease shall be terminated and the tenant shall be considered a holdover.

**3.3.2 Holdover Responsibilities, Port's Rights.** Unless the lease specifies other terms for the holdover tenant, the holdover tenant will remain

responsible under all the terms of the terminated lease, except that the lease will, from the date of termination, be month-to-month and the Port may demand the tenant vacate the premises with a ten (10) calendar day notice.

**3.3.3 Postponing Termination – Other Obligations.** If through the lease or other agreements the Port cannot terminate a lease as prescribed under the time and notice set forth in Section 3.3.1, above, the Executive Director, or his designee, shall do what procedures are necessary under the lease or other agreements to procure the termination with haste.

**3.3.4 Postponing Termination – Overriding Interest.**

- (1) *Staff Determination.* If the Executive Director, or his designee, determines (1) that terminating the lease will affect the Port's rights to the tenant's performance under the terms of that lease and (2) that the Port has an overriding interest in that performance, the Executive Director, or his designee, may postpone terminating the lease pending a decision by the Board at its next regular meeting whether to postpone termination.
- (2) *Port Attorney Recommendation.* The Port attorney shall recommend to the Board the best course of action to ensure its legal rights under the lease are preserved.
- (3) *Board Determination.* The Board shall vote whether to direct the Executive Director, or his designee, (1) to proceed with procuring termination in concert with the Port Attorney's recommendation, with haste, or (2) to continue termination without exception, in accordance with Section 3.3.1, above.

**3.4 Staff Determination of New Lease Likelihood.**

**3.4.1 Staff Determination of New Lease Likelihood.** Within fifteen (15) calendar days of termination, the Executive Director, or his designee, shall contact the holdover tenant and ascertain whether a new lease can be negotiated with the tenant, which provides for (1) terms no less restrictive than the terms of the terminated lease, (2) adequate security to ensure against the prospective new lease's default and termination, and (3) if applicable, payment, or other consideration in lieu of payment, of all past due amounts subject to Section 2, Collections Procedure.

**3.4.2 New Lease Negotiation Possible.** If, within the time set forth, above, the Executive Director, or his designee, determines a new lease, under the terms set forth, above, can be negotiated:

- (1) *Staff Recommendation.* The Executive Director, or his designee, shall negotiate and draft a lease to present to the Board for approval.
- (2) *Board Consideration.* The Board must consider the approval no later than sixty (60) calendar days after termination; however, the Board

may grant, under this provision, an extension of time of no more than thirty (30) calendar days if the Executive Director, or his designee, recommends the extension and the Board finds that extraordinary circumstances warrant the extension.

- (3) *Stay of Collections Procedure.* If applicable, the Executive Director, or his designee, shall stay the collections procedure outlined in Section 2.6, et seq., and Section 2.7, while negotiations and Board approval is pending. The stay shall become permanent upon approval of a new lease in accordance with the terms set forth in Section 3.4.2(2), above.
- (4) *Holdover Tenant Payment of Rent.* Prior to Board approval of a new lease pursuant to Section 3.4.2(2), the holdover tenant must pay regular rent during the holdover period.
- (5) *Definition – Failure to Negotiate.* As used in this ordinance, a “failure to negotiate a new lease” occurs when either (1) a new lease is not approved within the time set forth in this Section 3.4.2, or, (2) the tenant fails to pay rent during the holdover period, as required by Section (4), above.

**3.4.3 Negotiation Unlikely, Board Disapproval, or Holdover Tenant Failure to Pay.** If, within the time set forth in Section 3.4.1, above, the Executive Director, or his designee, determines a new lease, under the terms set forth in Section 3.4.1, above, cannot be negotiated or are unlikely to be successfully negotiated, or there is a failure to negotiate a new lease, as defined in Section 3.4.2(5), above, then:

- (1) *Staff Recommendation and Board Action.* The Executive Director, or his designee, shall present to the Board at its next regular meeting a recommendation whether (1) to evict the tenant or (2) to present to the Board what other alternative or alternatives he recommends to delay eviction while the tenant cures the default.
- (2) *If Applicable, Combined Recommendation with Collections Procedure.* If applicable, this recommendation may be combined with a recommendation to the Board pursuant to Section 2.6.1(3) of the Collections Procedure.
- (3) *Requirements if Alternative Recommendation Presented.*
  - (a) *Specific Conditions to Cure.* An alternative recommendation must set forth specific conditions and terms to cure the default.
  - (b) *Specific Time to Cure.* An alternative recommendation must set forth a specific time to cure the default, no later than sixty (60) calendar days from termination, pursuant to Section 3.3, or from a failure to negotiate a new lease, as provided for in Section

3.4.2(5), whichever is later. The Board may grant an extension of time of no more than thirty (30) calendar days if the Executive Director, or his designee, recommends the extension and the Board finds that extraordinary circumstances warrant the extension.

(c) *Promissory Note.* If an alternative recommendation takes the form of a promissory note, the promissory note must set forth a specific payment plan. If the tenant is a business, the promissory note must contain a personal guarantee of the owner or owners.

(4) *Effect of Board Approval of Alternative Recommendation.*

(a) *Considered "Cure" and Collections Settlement, If Applicable.* A signed promissory note or other settlement agreement is considered a "cure" under this subsection only, and, if applicable, a collections settlement for purposes of Section 2.6 of the Collections Procedure.

(b) *Tenant remains Holdover.* The tenant remains a holdover tenant under this subsection until the promissory note is paid in full or all the obligations under a settlement agreement are fulfilled.

(5) *Obligations Fulfilled – New Lease.* Once the promissory note is paid in full or all the obligations under a settlement agreement are fulfilled, a new lease may be entered into within thirty (30) calendar days after the final payment under the promissory note or fulfillment of a settlement agreement.

(6) *Obligations Not Fulfilled – Failure to Cure.* Any breach of the promissory note or settlement agreement will be considered a failure to cure under this subsection, and as applicable, will be considered a failure to follow-through a collections settlement for purposes of Section 2.6.3 of the Collections Procedure.

**3.5 Eviction.** If (1) the Board does not approve a new lease as set forth in Section 3.4.2, above, and does not approve a recommended alternative as set forth in Section 3.4.3, above, within the times set forth in those sections, as applicable, or (2) the tenant fails to fulfill the specific conditions set forth in an approved recommended alternative, as set forth in Section 3.4.3, above, within the time set forth in the approved recommendation, or (3) eviction is otherwise approved by the Board in accordance with this Section 3, then the Executive Director, or his designee, shall request the Port's attorney to do what is legally necessary for the Port to regain possession and control of the leasehold, including an action to impose punishment in accordance with ORS 198.600. For purposes of Section 4, the holdover tenant being evicted no longer has a valid lease with the Port. This Section shall not affect the Port's rights to collect past due amounts pursuant to Section 2, Collections Procedure.

**Section 4. Unlawful Possession of Port Property and Penalty.** If an individual or

business does not have a valid lease or license to use Port property, that individual or business must vacate that property within ten (10) calendar days, or within such other time as required by law, whichever is greater, of receipt of a notice from the Port that it intends to act to regain possession and control of that property. To the extent allowed by law, violators of this Section may be penalized in accordance with ORS 777.990(2) for each day, as a separate violation. Any fines assessed in accordance with this Section shall be in addition to all other damages, including attorney's fees, available to the Port against the violator.

**Section 5. Residential Tenants.** Because Oregon Law provides for specific methods of collecting rents from and providing notices to nonpaying residential tenants, as well as procedures for evicting nonpaying residential tenants, this ordinance shall not apply to residential tenants when the procedures set forth by this ordinance are in conflict with Oregon Law.

**Section 6. Economic Downturn or Local Disaster.** The Board may approve by a majority of its members a moratorium on the strict exercise of a provision of this ordinance if it finds that because of a severe economic downturn, recession, or depression, or because of a locally declared disaster, strict implementation of the provision would not be in the public interest. The moratorium must be by resolution and may only be effective for no more than six (6) months or until the swearing in of a new commissioner, whichever time period is shorter, and renewable by vote every six (6) months thereafter, unless a shorter time is specified in the moratorium. The resolution shall contain specific policies and procedures for staff to follow with regards to the provision of the ordinance affected during the moratorium.

**Section 7. Future and Present Contracts.** This ordinance shall control over all leases, contracts, or other agreements and amendments entered into by the Port after the effective date of this ordinance. This ordinance and any amendments to it shall be included with all new leases and contracts, and amendments to current leases and contracts, to inform the counterparty of the requirements this ordinance imposes on the counterparty. Any provision to a lease or contract entered into after the effective date of this ordinance which imposes less stringent standards or which otherwise conflicts with this ordinance shall be superseded by this ordinance. This ordinance shall control over all other leases, contracts, and agreements only to the extent that the provisions of this ordinance can be read in concert with those agreements.

**Section 8. De Minimus.** The Board may approve, by resolution, a past due amount, no greater than one thousand dollars (\$1,000), which may be considered a "de minimus" amount past due. The Executive Director, or his designee, may determine not to apply the procedures set forth in this ordinance for amounts that are de minimus. The Executive Director, or his designee, shall not split or fail to calculate together total past due amounts in an attempt to place the amount under the purview of this Section.

**Section 9. No Rights or Remedies Created.** The procedures set forth in this Ordinance are policies to be exercised and implemented by the Port. Nothing herein shall be construed to create rights or remedies for counterparties, including tenants.

**Section 10. Use of Singular and Plural, Gender.** Unless the ordinance's context otherwise requires: (1) words in the singular number include the plural, and in the plural include the singular; and (2) words of any gender include any other gender.

**Section 11. Effective Date.** This ordinance is effective immediately upon its adoption or as required by law.

**Section 12. Severability.** If any part or provision of this ordinance is held invalid by a court of competent jurisdiction, the remaining parts and provisions of this ordinance shall remain in full force and effect to the extent that the original intent of this ordinance may be sustained.

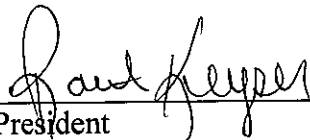
**Section 13. Repealer.** All policies, resolutions, ordinances, and other district laws in conflict with this ordinance are hereby repealed.

**PASSED AND ADOPTED** this day, by the following vote:

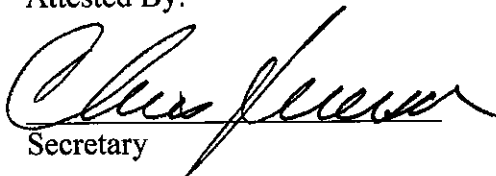
AYES: 5 NAYS: 0

FIRST READING	July 22, 2009
SECOND READING	August 12, 2009
PASSED AND ADOPTED	August 12, 2009

Port of St. Helens

By:   
President

Attested By:

  
Secretary