



MEMORANDUM

February 4, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Doreen Woo Ho, Vice President
Hon. Kimberly Brandon
Hon. John Burton
Hon. Gail Gilman

FROM: Elaine Forbes
Executive Director 

SUBJECT: Update to Port's Uncollectable Balances Write-Off Policy

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

EXECUTIVE SUMMARY

As a self-supporting enterprise agency, the Port's revenue from its property funds operation, maintenance, and capital costs for its renowned open spaces, maritime commerce facilities, and historic resources. Maintaining accurate financial statements is critical for the Port's budget and credit rating. The rise in unpaid invoices during the COVID-19 pandemic has prompted staff to review Port's accounting policies and to bring forward this proposed update to the Port's existing uncollectable balances write-off policy which was last approved by the Port Commission in the early 1980s. The policy needs to be clarified and modernized so that the Port's collections can be as cost-effective as possible.

A "write-off" is an accounting action which reduces or eliminates an unpaid balance, after the party to whom the money is owed has exhausted commercially reasonable efforts to collect. For the Port, this starts when a tenant or other property user has left its premises without having paid all amounts due.¹ As a policy matter, the Port will

¹ The Port will not "write-off" a balance if the tenant is still in place. When a tenant remains in its space with an outstanding amount due, the Port will pursue a settlement, lease amendment, unlawful detainer action, or similar.

“write-off” outstanding amounts only after exhausting all other options to collect the balance.

As described in detail in the November 2021 staff report, the unpaid balance of rent owed to the Port is almost seven times the typical pre-pandemic level. While staff are working to bring tenants into lease compliance, the Port is prepared for tenants to abandon, terminate, and/or let their lease expire without paying the full balance. Once this happens and the Port has possession, the Port needs to evaluate its options including the possibility that the debt is uncollectable.

The City Charter and the Administrative Code provide authority to write-off uncollectable balances to the Port, City Attorney’s Office (Charter §6.102) and the City Controller (SF Admin. Code §10.41-1). The proposed update to the 1984 policy will clarify:

- (1) steps Port staff will take to pursue an outstanding balance;
- (2) actions Port staff will take to analyze the costs of pursuing a balance;
- (3) discussions Port staff will have with City Attorney to estimate likely collections relative to the pursuit costs;
- (4) Port staff’s role in recommending a write-off to Office of the City Attorney and City Controller;
- (5) documentation and reporting;
- (6) delegation to Port staff for implementation of the policy; and
- (7) Port staff’s reporting of write-offs to the Port Commission.

STRATEGIC OBJECTIVE

A refined policy for write-offs of uncollectable balances will increase staff’s efficiency, as staff will have clear steps to take to pursue a balance and determine whether to write-off a billed amount. This supports the below Strategic Plan 2021-2025 Economic Recovery goal about operational efficiencies.

Economic Recovery - Goal: Develop and implement strategies to stabilize the Port’s financial position from the COVID-19 Pandemic economic impacts.

- *Economic Recovery. Identify and implement expenditure reductions, revenue enhancements, **operational efficiencies**, and external funding sources.*

BACKGROUND

A “write-off” is an accounting action which reduces or eliminates an unpaid balance, after the party to whom the money is owed has exhausted commercially reasonable efforts to collect. The Port’s current policy for “writing off” uncollectable balances is out-of-date and needs to be clarified for increased effectiveness.² The new policy will clarify the necessary steps to determine that the cost of pursuing the balance is outweighed by the likely recovery of funds. The City Attorney’s Office (Charter §6.102) and the City Controller (SF Admin. Code §10.41-1) must recommend or approve (respectively) all write-offs.

² See Exhibit 2, Resolution No. 84-83.

Currently, the unpaid balance of rent owed to the Port is almost *seven times* the typical pre-pandemic level, totaling \$28.8 million (compared with \$3 to 4 million pre-pandemic). Given the state of the economy, there is a relatively large chance that much of this debt is uncollectable and the Port will need to write-off a larger amount of money than in a typical year. For historical context, in the past decades, the Port processed only a few write-offs a year. Table 1 below summarizes most write-offs between 2008 and 2018. During this period, Port determined that 33 tenant balances, summing to a total of about \$2.9M were uncollectable.³ This is a fraction of a percentage of the Port’s typical annual budget.

Table 1. Count and Value of Write-Offs, 2008-2018

Year	Number of Write-Offs	Value
2018	2	\$356,982
2017	1	\$180,476
2016	3	\$267,044
2015	2	\$295,418
2014	2	\$6,238
2013	2	\$42,185
2012	3	\$305,245
2011	4	\$113,877
2010	7	\$882,003
2009	5	\$432,069
2008	<u>2</u>	<u>\$21,692</u>
<i>Average, 2008-2018</i>	3	\$263,930
<i>Total, 2008-2018</i>	33	\$2,903,227

PROPOSED UNCOLLECTIBLE BALANCES WRITE-OFF POLICY

The proposed policy will apply to all outstanding debt owed to the Port as a result of non-payment of rent, fees, or other amounts due for all property agreements where a tenant is no longer in possession.⁴ This policy will not affect the Port’s policies regarding settlements; any settlement agreement with a concession of \$25,000 or more is subject to the approval of the Port Commission.⁵

³ The majority of these write-offs were for amounts less than \$10,000 or in cases of an unpaid balance after a negotiated settlement agreement, or a successful unlawful detainer action.

⁵ See Port Commission Resolution No. 10-01. Debts addressed under this proposed updated policy are distinct from a settlement scenario because in a settlement agreement each side is providing concessions. Here, the Port – with concurrence from City Attorney and Controller - is unilaterally determining that the debtor has nothing to offer. This proposed updated policy could apply where, for example, the Port determines that a tenant is unable to fulfill its obligations under a settlement agreement.

Exhibit 1 is the proposed Uncollectible Balances Write-Off Policy. Items 1-xx below summarize the processes in the proposed policy. In the course of pursuing collections and diligent analysis, some of these steps may be repeated and/or may be concurrent. 1. Confirm that Port has possession. Determine if balance is eligible under the policy, including whether business and policy factors other than the payment of money need to be considered. 2. Determine if a delinquent account is either “uncollectable” or “not cost effective to pursue”. In order to make this determination Port staff must take at least the following steps:

- a) Diligently and timely notify and bill the debtor
- b) Make repeated attempts to collect by written and oral communications
- c) Preserve evidence and Port’s rights within the statute of limitations period
- d) Exhaust the potential for a payment plan or negotiated settlement
- e) Apply all security deposits or other financial assurances to the balance and
- f) Conduct preliminary business and asset search to identify any possible assets.

Through these steps, Port staff may conclude an account is “uncollectible” if the debtor is bankrupt or otherwise has insufficient assets to pay the balance. If debtor may have funds, move on to Step 3.

3. Collaborate with Deputy City Attorneys assigned to the Port and other City Attorney litigation, claims, and investigations staff generally as follows:

- a) For amounts greater than \$10,000, the City Attorney’s Office will conduct the business and asset search
- b) For amounts greater than \$25,000, the City Attorney’s Office will assess the likelihood of success on the merits given possible defenses and counterclaims.
- c) For amounts greater than \$50,000, the City Attorney’s Office will assess the likelihood of success on the merits given possible defenses and counterclaims.
- d) Port staff and the City Attorney’s Office will analyze the case.

4. Report all recommended write-offs to City Controller.

If Port staff and City Attorney staff determine one of the three conclusions below, Port staff will report recommended write-off to City Controller:

- a) The debtor and/or other responsible parties, if any, have insufficient assets to pay the amounts owed or
- b) The debtor and/or other responsible parties, if any, have or may have assets, but it would not be cost effect to further pursue the case given the potential cost and/or risks of litigation or
- c) There are no other policy issues aside from the money owed.⁶

⁶ Port may wish to continue to pursue balances even if that pursuit may not make clear financial sense for other policy reasons. For example, if tenant caused damage to property or if the Port has similarly situated tenants and a write-off for one may be viewed as too lenient by others

5. Follow steps for internal approvals and accounting processes. The Deputy Director, Fiscal Officer, City Attorney, and City Controller each have a role in signoffs.

NEXT STEPS

Port staff recommend returning at a subsequent Port Commission meeting with an action item to rescind Resolution No. 84-83, Accounts Receivable Write-Off Policy and replace it with an updated Uncollectible Balances Write-off Policy.

Prepared by: Rebecca Benassini, Deputy Director of Real Estate and Development, with contributions and review by:
Kimberley Beal, Steve Rodriguez, Peter Yee

Attachments:

Exhibit 1: Proposed Uncollectible Balances Write-off Policy

Exhibit 2: Resolution No. 84-83, Accounts Receivable Write-Off Policy

Exhibit 1

Proposed Uncollectible Balances Write-off Policy

Purpose

The administrative policies and procedures described below outline the policies, criterion and processes for determination of un-collectability of delinquent debt and procedures and processes for writing-off such debts.

The City Attorney's Office (Charter §6.102) and the City Controller (SF Admin. Code §10.41-1) must concur in all write-offs.

Scope

This policy and procedure applies to all outstanding debt owed to the Port as a result of non-payment of rent, fees (including permit fees), or other amounts due under: leases, licenses, berthing and other maritime agreements, settlement agreements, payment plan agreements, judgements, exclusive negotiation agreements, lease disposition and development agreements and any other agreements that require payment to the Port in consideration for the use of Port lands or facilities, such as Memoranda of Understanding or permits.

This policy does not:

- affect the Port's policies regarding entering into settlements; any settlement agreement with concessions of \$25,000 or more is subject to the approval of the Port Commission.
- affect Port's routine refunds and allowances made in the normal course of business to adjust errors in billing, such as when an agreement has been terminated in the middle of a billing cycle and an invoice is logged in the property management and billing system. Staff will continue to process refunds and allowance in the normal course of business in compliance City policy.
- apply to any tenant or other person continuing to occupy Port property. Port will attempt to resolve delinquent accounts for such entities through exercising its lease/license remedies (including notice of default, negotiation of a payment plan (full amount plus interest – no concession), a settlement agreement (subject to Port Commission approval as above), a negotiated surrender or an eviction action or a combination of the above, as appropriate).

This policy applies to any amounts owed only once the entity is no longer on Port property.

Determination of Un-collectability

A determination must be made that a delinquent account is either “uncollectable” or “not cost effective to pursue” before it can be written off as bad debt. In order to make this determination Port staff must take at least the following steps:

1. Timely and diligently notify and bill the debtor and make repeated attempts to collect by written and oral communications.
2. Act diligently in order to minimize the accrual of late fees and interest and to preserve evidence and Port’s rights within the statute of limitations period for the relevant claim.
3. Exhaust the potential for a payment plan or negotiated settlement and payment under an existing payment plan or settlement agreement.
4. Apply all security deposits or other financial assurances to the outstanding balance.
5. Determine that all commercially reasonable efforts to collect the amount owed have been exhausted.
6. Conduct a preliminary business and asset search, including a credit check and review debtor’s own financial records when available, to determine whether the debtor is still an existing ongoing business enterprise and to identify any possible assets owned by the debtor and/or related parties that may be used to satisfy payment of the outstanding balance.
7. Confirm that the debtor is bankrupt or otherwise has insufficient assets to pay the balance.
8. Where the amount at issue warrants, as a general rule, \$10,000 or more request that the City Attorney’s Office conduct a business and asset search of available records to assess the debtor’s (and responsible related parties’) assets.
9. Where the amount at issue warrants, as a general rule, \$25,000 or more, request that the City Attorney’s Office assess the likelihood of success on the merits given possible defenses and counterclaims.
10. Where the amount at issue warrants, as a general rule \$50,000 or more, request that the City Attorney’s Office estimate the cost of litigation and collection of a successful judgement, the likelihood of collection and of recovering attorneys’ fees.
11. Given the factors above, Port staff and the City Attorney’s Office have together analyzed the case and have made one or more of the following determinations in their best professional judgement:
 - The debtor and/or other responsible parties, if any, have insufficient assets to pay the amounts owed.
 - The debtor and/or other responsible parties, if any, have or may have assets, but it would not be cost effect to further pursue the case given the potential cost and/or risks of litigation.
 - There are no other policy issues aside from the money owed.

Note, the above steps may be serial or concurrent and may be repeated as needed as the matter progresses. If the above steps result in Port staff and City Attorney determining an account is uncollectible, report the bad debt as uncollectible to the City Controller and obtain City Controller concurrence.

Compliance with Administrative Code

Administrative Code Section 10.41-1 governs collections of delinquent accounts by the Port. It provides that the Port is responsible for the collection of its own delinquent revenues and delinquent accounts. Accounts that are delinquent for more than 90 days must be reported to the Controller. Port complies with the reporting requirement by providing the Controller with a customer account balance analysis and a refunds and allowances report. These reports include refunds, credits, and write-offs.

Section 10.41-1 further provides that delinquent amounts may, with the approval of the Controller, be cancelled if the Port's Executive Director is of the opinion that the accounts cannot be collected and in the event of such cancellation, the department shall no longer be responsible for their collection. Documentation of the Controller's approvals are saved and maintained by the Financial Reporting Supervisor.

Write-off Process – Internal Steps and Accounting

Under the steps listed above, Port staff, the City Attorney's Office and the City Controller shall jointly agree that the outstanding balance is deemed to be "uncollectable" and as such will be written-off pursuant to the process outlined below.

STEP 1

All write-offs of accounts must be routed through the Port's Collections Supervisor. The Port's Collections Supervisor shall prepare a final statement of the account and the exact amount of bad debt to be written off.

STEP 2

Where the amount at issue warrants, the City Attorney's Office shall prepare a confidential memorandum describing its findings and analyses with respect to possible assets, likelihood of success, cost of litigation and other relevant factors.

STEP 3

The Property Manager or Assistant Deputy Director (of appropriate division) shall prepare a memorandum, with sign off by the appropriate Deputy Director, and submit it to the Accounting Operations Supervisor as part of Step 4. The memorandum will include a justification and recommendation to write off the specific account. The memorandum shall generally follow a form agreed by the Port, City Attorney's Office and Controller (as revised from time to time) and shall be sufficient for third-party audit purposes. The memorandum shall include at least the following information

- Account Number and total write off amount
- Account/Tenant Name
- Lease/Document Number
- Background and collection efforts made to date
- Analysis/Write-off criterion/Determination of un-collectability
- Documentation or conclusions produced in Steps 1 and 2 above
- Appropriate Port signatures
- Written concurrence of City Attorney's Office

STEP 4

The Port Collections Supervisor processes the memorandum package as a miscellaneous billing. All non-standard billings such as credits, discounts, refunds and write-offs are processed as miscellaneous billings.

STEP 5

The Port's billings and collections unit will enter the write-off in the property management and billing system.

STEP 6

Port staff will report write-offs to the Port Commission at least on an annual basis.

Exhibit 2: Resolution No. 84-83, Accounts Receivable Write-Off Policy