

MEMORANDUM

July 5, 2018

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a five-year lease and associated license and berthing agreement between the Port of San Francisco and an existing Pier 40 maritime tenant, Spinnaker Sailing San Francisco, a California Corporation (Lease Number L- 16336; License Number 16369, Berthing Agreement 16370), for operations in the Pier 40 Shed and South Beach Harbor

DIRECTOR'S RECOMMENDATION: Request Approval of the Resolution

Executive Summary

Port staff is seeking approval of one five-year lease and associated license and berthing agreement (the "Agreements") with an existing Pier 40 retail tenant, Spinnaker Sailing San Francisco, a California Corporation, (Lease Number L-16336, License Number 16369, Berthing Agreement 1670), under the Port's Maritime Excursion Renewal Policy.

Background

The former San Francisco Redevelopment Agency (SFRDA) developed South Beach Harbor/ Pier 40 in the early 1980s under a ground lease with the Port and managed it until the 2012 dissolution of redevelopment agencies under California Community Redevelopment Law at which time the Port commenced managing the property. The Port now administers the Harbor/Pier 40 and conducts property management and oversight.

THIS PRINT COVERS CALENDAR ITEM NO. 10A

Pier 40 is part of the South Beach Harbor operation and was included in the transfer from the SFRDA to Port management. Pier 40 had twelve SFRDA legacy tenants operating on SFRDA agreements. Eleven have been transitioned to Port leases. The remaining legacy tenant is Spinnaker Sailing, San Francisco. The proposed Agreements allow Spinnaker to continue its existing business operations and raises the rental rates and excursion fees to Port Commission approved levels.

Spinnaker Sailing San Francisco

Spinnaker Sailing was founded in 1978 and located in Pier 40 since 1988. They offer sailing lessons, timeshare sailing, bareboat charters, skippered charters, sailing club and team building activities. They have two U.S. Coast Guard Certified vessels of 50 and 90 feet in size offering corporate and private sailing trips. The tenant has been cooperative in the transition of South Beach Harbor to Port control and remains in good standing. The tenant has a proven track record of promoting recreation uses and providing positive visitor experiences. Under the proposed agreements, the tenant will pay parameter monthly rent, percentage rent, and berthing fees.

Maritime Excursion Lease Renewal Policy

The Port Commission in 2010 adopted a Maritime Excursion Lease Renewal Policy (Resolution No. 10-21). The Policy and accompanying Memorandum from Port staff is attached as Exhibit to this Memorandum. The Maritime Excursion Lease Renewal Policy was approved to protect maritime uses and excursion uses. Like the Port's current Retail Leasing Policy, the fundamental premise of this policy is to outline a blueprint for lease extensions for current excursion tenants. The Maritime Excursion Lease Renewal Policy recognizes the Port's desire to promote and protect its maritime uses and offers guidelines for renewal for such maritime excursion leases. The policy does not cover requests for changes of use. All renewals must retain at least the same proportion of maritime uses as defined in the existing lease. Staff believes that the proposed Agreements meet the criteria of the Maritime Excursion Lease Renewal Policy and it serves as a basis for entering into a lease renewal with Spinnaker Sailing instead of offering the site in competitive bid process.

Lease, Landing Rights Agreement, and Berthing Agreement

The Port and Spinnaker Sailing have negotiated Landing Rights Agreement, No. 16369 in connection with the following other agreements: (i) Lease No.L-16336 for shed space in Pier 40; and (ii) Berthing Agreement No. 16370 allowing Licensee to berth certain vessels in certain locations at South Beach Harbor. The License allows Spinnaker Sailing to land and conduct commercial business at South Beach Harbor. Rent and land fees are described and due under each of this License, the Berthing Agreement and the Lease, but because of their interrelated nature and for the convenience of the Port and Spinnaker Sailing, rent and fees will be consolidated, reported and paid as described below in the Proposed Lease Terms.

PROPOSED LEASE TERMS

Port Real Estate staff and representatives of the Spinnaker have negotiated proposed Lease No. L-16336 providing for the following terms and conditions:

<i>Premises :</i>	Approximately 2,225 square feet in the Pier 40 Shed located along The Embarcadero, and use of berths in South Beach Harbor under the License and Berthing Agreement			
<i>Length of Term:</i>	Five (5) years			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	2,225	\$0.85	\$1,891.25
	13-24	2,225	\$1.00	\$2,225.00
	25-36	2,225	\$1.03	\$2,291.75
	37-48	2,225	\$1.06	\$2,360.50
	49-60	2,225	\$1.09	\$2,431.32
<i>Percentage Rent:</i>	In addition to the monthly Rent shown above, as provided by the Berthing Agreement and License, Tenant shall pay: (A) Excess Berthing Fees as described in the Berthing Agreement; plus (B) Berthing Fees as described in the Berthing Agreement;(C) a percentage of all other Gross Revenues under this Lease, the Berthing Agreement and the License in an amount equal to seven percent (7%) of Gross Revenues in any month when (i) the Percentage Rent for such calendar month exceeds the (ii) the Berthing fees due under the Berthing Agreement for such calendar month. All Rent and Fees due under this Lease, the Berthing Agreement and License shall be reported in a consolidated manner on the monthly reporting statement form.			
<i>Vessel Berth Fees:</i> <i>(from the Berthing Agreement)</i>	Spinnaker currently rents Thirteen (13) vessel Berths for a total monthly rent of \$8,880.51.			

<i>Annual Rent Adjustment:</i>	The monthly rent shall be increased by 3% on each anniversary date.
<i>Security Deposit</i>	Ten Thousand Dollars and No Cents (\$10,000.00)
<i>Permitted Use:</i>	Office Trailer; boat repair and fabrication of new boats; administrative functions in connection with the following commercial operation that are permitted und the Berthing Agreement and License: In connection with the Permitted Uses, tenant may store sailing equipment (e.g. rope/rigging materials, sails, floatation devices, hand tools, etc.) Storage no more than 50 gallon total of Hazardous Materials for minor sailboat repair activities (e.g. varnishes, solvents, paints, coatings, etc.) and fuels/oil.
<i>Seawall:</i>	The Seawall runs underneath the Pier 40 shed. In the Lease, the Port reserves the right to enter and use the Premises as needed for the purpose of inspecting, repairing, and rebuilding the Seawall and/or to terminate the Lease as needed due to the Seawall Earthquake Safety Project.
<i>Insurance:</i>	Tenant shall provide insurance coverage acceptable to Port and City Risk Manager.
<i>City Requirements:</i>	The Lease includes provisions requiring Tenant to comply with all applicable City laws (including, but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws).
<i>Standard Lease Provisions:</i>	The Lease contains all current lease provisions on the standard form approved by the City Attorney’s Office including provisions regarding: compliance with laws, Port’s Right to Terminate, Indemnity and Exculpation and Hazardous Materials.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The permitted uses in the Lease are a continuation of existing and related uses and are therefore not a project under the California Environmental Quality Act (“CEQA”).

STRATEGIC OBJECTIVE

These leases comply with the goals of the Port’s Strategic Plan as follows:

1. *Livable and Engagement: this tenant meets the Port’s Strategic Objective of engagement by allowing access to the bay and the bay trail and waterfront and the Port’s blue greenway.*

RECOMMENDATION

Port staff recommends that the Port Commission approve the proposed Agreements with Spinnaker Sailing San Francisco, a California Corporation on the terms and conditions described above.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager

Prepared for: Peter Dailey Deputy Director, Maritime

Exhibit: Maritime Excursion Lease Renewal Policy

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 18-40

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port has managed South Beach Harbor/ Pier 40 since the dissolution of the San Francisco Redevelopment Agency and other redevelopment agencies under California Community Redevelopment Law; and
- WHEREAS, The Spinnaker Sailing, a California Corporation has been a tenant at South Beach Harbor/Pier 40 in the City and County of San Francisco since the 1980s, is a tenant in good standing, and has a proven track of providing positive visitor experiences such that the proposed agreements would meet the Port's Strategic Objectives by retaining an engaging waterfront by providing active recreation;
- WHEREAS, The Port Commission's Maritime Excursion Lease Renewal Policy (Port Commission Resolution 10-21) outlines criteria for renewal of existing maritime excursion tenants through direct negotiation and Port staff has determined that the proposed agreements qualify for direct negotiations under the policy; and
- WHEREAS, Port Staff has negotiated a new five (5) year retail lease and associated license and berthing agreement (the "Agreements") with Spinnaker Sailing San Francisco, the terms of which are described in the Memorandum to the Port Commission dated July 5, 2018; and
- WHEREAS, This use is a continuation of existing and related use and is therefore not a project subject to review under the California Environmental Quality Act; now, therefore be it
- RESOLVED, The Agreements are consistent with the Maritime Excursion Renewal Policy; and be it further
- RESOLVED, The Port Commission hereby approves the Agreements and authorizes the Executive Director or her designee to execute the Agreements; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the Agreements that the Executive Director, in consultation with the City Attorney, determines when taken as a whole, are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 10, 2018

Secretary

PORT OF SAN FRANCISCO
MARITIME EXCURSION LEASE RENEWAL POLICY

GENERAL PORTWIDE POLICY

The Port of San Francisco (“Port”) is a public enterprise dedicated to recreational and maritime use, transportation, public access and commercial and industrial activities on a self-supporting basis through appropriate management, use and development of the waterfront for the benefit of the people of California.

The Port fosters maritime activity and encourages public use and enjoyment of the San Francisco waterfront. The Port strives to integrate maritime uses in its waterfront projects and promotes private investment in these activities for public benefit. The Port manages its properties equitably at market value and in accordance with all laws.

OVERVIEW

The Port is home to major San Francisco visitor venues. Tourism is the City of San Francisco’s leading industry and the Port is the embarkation point for waterborne tours in and around San Francisco Bay that serve millions of visitors annually. Port Excursion and ferry operators are valued tenants of the Port and provide significant transportation benefits, emergency preparedness options and substantial economic impact for the City. The Port values our long standing relationships with current excursion and ferry operators and is proud of the outstanding maritime transportation services these tenants provide.

The Maritime Excursion Lease Renewal Policy pertains to the Port’s maritime leases along its Waterfront with tenants who provide waterborne excursion (including ferry excursion) activities. These activities include Bay tours, passenger ferry operations, excursions to Alcatraz and Angel Islands, and other similar water-related excursion operations. This policy is a guide for current Port excursion operators seeking long-term maritime excursion lease renewals.

This policy is intended to set internal guidelines only. It is not intended to restrict the Executive Director’s authority to make any decision deemed in the Port’s best interest. This Maritime Excursion Lease Renewal Policy recognizes the Port’s desire to promote and protect its maritime uses and offers guidelines for renewal for such maritime excursion leases. This policy does not cover requests for changes to the use allowed under a lease. All renewals must retain at least the same proportion of maritime uses as defined in the existing lease.

This Maritime Excursion Lease Renewal Policy is intended to ensure that maritime excursion leases are equitably administered, are fairly valued, generate revenues to the Port and its business partners, and serve the San Francisco residents and visitors. It is acknowledged that Maritime excursion tenants are required to provide a high level of

private investment, such as landing facilities, vessels and other necessary equipment, in order to operate successfully.

It is intended and will be administered to support Port tenants and their investments in Port leased property and their reasonable commercial expectations. Through this Maritime Excursion Lease Renewal Policy, the Port is committed to maximizing the use of existing maritime excursion vessel facilities and realizing financial and other benefits to the Port's portfolio. For purposes of this Maritime Excursion Lease Renewal Policy, "renewal" and "renew" shall include lease renewals, extensions, and/or amendments to existing leases with maritime excursion tenants as described above.

MARITIME EXCURSION LEASE RENEWAL POLICY

The Port has adopted the following requirements governing the review of requests for Renewal of an existing lease that includes scheduled waterborne excursions in and around San Francisco Bay and that may or may not include sales of tickets and other ancillary consumer goods and services:

A. Conditions to Consideration for Lease Renewal include but are not limited to:

1. The Port will consider proposals to renew Maritime Excursion Leases that include term extensions only within the final five years of a current lease or in the event that a Tenant proposes tenant-financed, maritime use expansion or improvements (such as structural or life-safety improvements) to Port facilities that cannot be amortized within the existing lease term but can be amortized before the expiration of an extended term.
2. The Port will not consider modifications to use provisions for a current lease, including expansion of retail uses, if the modifications exceed the existing proportion and character of current uses. The Port will only entertain a non-proportionate increase of retail as a part of a formal solicitation (e.g. Request for Proposals) for a new lease at the subject site.
3. The Port reserves the right to approve in its discretion the use of any specific Port location for excursion service.
4. The Tenant must be a "tenant in good standing," in accordance with Port Commission Resolution No 09-49.
5. Proposed capital improvements will be completed at the Tenant's expense. If a Lease is renewed based on Criterion #1 above, the Tenant must make a good faith effort to perform such improvements within 60 months of Lease Renewal and failure to do so may result in immediate termination of the Renewed Lease.
6. Tenant must demonstrate the financial capacity to undertake and complete the proposed improvements, including all sources of financing, which shall be reviewed independently by the Port.

7. Any lease renewals will be reviewed and approved by the Port Commission and by the City Board of Supervisors, if required each in its independent authority.

B. Obligations of Renewed Leases include but are not limited to:

1. Tenant or its authorized agent (such as a wholly owned or Tenant-controlled subsidiary) must be the excursion operator. Any subtenants will be reviewed and approved by the Port in its discretion.
2. Market rent will be established at execution of the Renewed Lease based on available industry comparables and site history.
3. The Port will charge a participation rent on all concession revenues.
4. The Port will charge a participation rent on all retail sales, including subtenant sales.
5. The Tenant will disclose all gross revenues and grant the Port the right to conduct periodic audits and obtain and review related financial reports promptly following request.
6. The Port may participate appropriately in proceeds from the sale, transfer, assignment and refinancing of Port leaseholds as specified in the current Port Commission lease boilerplate. The Port will retain the right to approve all ownership and capital changes.
7. The Tenant will adhere to California Environmental Quality Act provisions and cooperate fully with the Port of San Francisco and the San Francisco Planning Department during the CEQA compliance process. The Tenant will comply with all other laws, including, without limitation, current San Francisco City laws and regulations.
8. Upon completion of an existing excursion lease, the Port reserves the right not to renew the lease due to proposed project(s) at a given location, existing area conditions or other land use considerations affecting the use under the lease.

The Port Commission reserves the right, in its sole discretion, to modify or waive any portion of this policy. Additionally, this policy is not intended to apply to Port Commission Request for Proposals ("RFP") or Exclusive Right to Negotiate Agreements ("ENA"), for any lease, development, rehabilitation or use of the Port's property. Such an RFP or ENA may include some, but not all, of the considerations contained in this policy.

EFFECTIVE DATE - Upon adoption by the Port Commission, this Policy shall become effective on May 1, 2010.