

Attachment B

MEMORANDUM

April 7, 2010

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Stephanie Shakofsky, Vice President
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

SUBJECT: Request adoption of the Port's Maritime Excursion Lease Renewal Policy that establishes internal guidelines for extending the terms of maritime leases for the berthing and operation of excursion vessels.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Background

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

The Port receives inquiries from its current maritime excursion tenants for additional benefits from the Port in the form of extended leases, more leasehold space, change of use or other amendment to their leases. Port staff recommends that requests for lease renewals (including amendments and extensions thereof) are considered pursuant to a Maritime Excursion Lease Renewal Policy.

To ensure clarity, equity and consistency in considering such requests, Port staff recommends adoption of a policy delineating the circumstances under which the Port will consider a renewal, amendment or extension of a Maritime Excursion lease.

The Port Commission has previously adopted a retail leasing policy that covers all retail/restaurant renewals. The Maritime policy, like the Port's current Retail Leasing Policy, levels the playing field and stresses competitive bidding of maritime leases that include retail opportunities. While all use provisions of Port leases for excursion uses are not exact, the fundamental premise of this policy is to outline a blueprint for current excursion tenants that lease Port property along with berthing space.

The purpose of the policy is to protect maritime uses and expand excursion uses. A lease renewal request that proposes an expansion of maritime uses would be considered under this policy. A renewal request that proposes modifications to original use provisions exceeding the existing proportion and character of current uses would be considered by the Port, in its discretion, as part of a formal solicitation (e.g. Request For Proposals) for a new lease at the subject site.

This proposed policy was originally brought to the Port Commission at its January 12, 2010 meeting as an informational item. Subsequently, Port staff presented the proposed policy to the Port's Maritime Commerce Advisory Committee at its January 21, 2010 meeting. Additionally, Port staff met with representatives of the Port's current excursion operators to gain their perspective and ideas. Port staff also met with representatives of the National Park Service to outline the rationale for the proposed policy. As a result of these meetings and to clarify our desire for the expansion of maritime uses, Port staff has modified portions of the original draft policy.

Recommendation

Port staff recognizes the benefit of clarity and equity when enforcing its leases. Port staff acknowledges that further definition assists in this process and recommends approval of the attached Maritime Excursion Lease Renewal Policy.

Prepared by: Peter Dailey, Deputy Director of Maritime

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

RESOLUTION NO. 10-21

WHEREAS, Charter Section B.3581 empowers the Port Commission with the authority and duty to use, conduct, maintain, manage, regulate and control the lands within the Port jurisdiction; and

WHEREAS, the Port of San Francisco is one of the nations leading excursion embarkation ports; and

WHEREAS, approximately 3 million people take excursion or ferry boats from the Port; and

WHEREAS, the Port's excursion tenants play an important role in San Francisco's position as a leading visitor destination; and

WHEREAS. The Port acknowledges the commercial need to supplement the maritime uses of excursion leases with retail amenities for passengers; and

WHEREAS, the Port wishes to provide clarity, equity and consistency in considering requests to extend or expand maritime excursion operations; and

WHEREAS, Port staff has crafted a policy delineating the circumstances under which the Port will consider a renewal, amendment or extension of a Maritime Excursion lease; and

WHEREAS the policy (the Maritime Excursion Lease Renewal Policy) is attached to the Executive Director's memorandum to the Commission dated April 7, 2010 regarding Maritime Excursion Lease Renewal Policy that is submitted with this Resolution and on file with the Secretary of the Commission; and

WHEREAS staff recommends that the Port Commission approve and adopt the Maritime Excursion Lease Renewal Policy; and, now therefore, be it

RESOLVED, that the Port Commission hereby approves and adopts the Maritime Excursion Lease Renewal policy.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of April 13, 2010.

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.