




MEMORANDUM

December 10, 2021

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request Approval to Extend Fee Waivers for Licenses for Use of Port Property for Restaurants and Retail Businesses on Private Property Adjoining Port Property in Connection with the Port's Shared Spaces Program for Outdoor Dining and Retail Activities for an additional four months through April 30, 2021

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 21-52

EXECUTIVE SUMMARY

The Port Commission has launched several programs to support the economic recovery of small businesses along the Waterfront. One of those programs is the Port's Shared Spaces Program that Port staff designed to be aligned with the City's City Shared Spaces Program. Both Shared Spaces programs create opportunities for restaurants and retailers to utilize sidewalks, parking spaces, streets, and open spaces adjacent to their businesses, as indoor capacities were eliminated or reduced during the COVID-19 pandemic.

On November 10, 2020, the Port Commission approved Resolution 20-50 authorizing Port Staff to issue no-fee licenses for non-Port tenants, and fee waivers and fee credits for pre-existing licenses with non-Port tenants in connection with the Port's Shared Spaces Program. This was an effort to provide equitable access to the program for non-Port tenants, who would be able to utilize the right-of-way adjacent to their premises

without fees if the space were not within Port jurisdiction. In June 2021, under Resolution 21-26, the Port Commission extended the fee waivers for non-Port tenants through December 31, 2021.

On July 13, 2021, the Board of Supervisors unanimously passed legislation introduced by Mayor Breed to make the Shared Spaces program permanent (Ordinance No. 99- 21). Under the City's permanent Shared Spaces Program, permit and license fees will be waived for the next 4 to 15 months, depending on the type of space.

To continue to align with the larger City program, which includes temporary fee waivers for Shared Spaces participants using sidewalk space until April 15, 2022, Port staff is seeking to extend the fee waiver for non-Port tenants through April 30, 2022.

Under existing delegated authority, Port staff will also continue to waive additional fees for Port tenants until April 30, 2022 and Port tenants will continue to pay percentage rent on sales generated within their leased and Shared Spaces licensed area. Combined, these programs and use of delegated authority allow the Port to provide equitable access to use of public property for all San Francisco businesses, regardless of whether the business is on or off Port property or is or is not a Port tenant.¹

BACKGROUND

In response to the COVID-19 Health Pandemic, through the issuance of the Mayor's Eighteenth Supplement to the Mayoral Emergency Proclamation, the Mayor created a temporary program for retail businesses and restaurants to use public sidewalks and parking lanes fronting their premises for outdoor dining and retail display and sales ("Shared Spaces"). The Mayor's order allowed a fee waiver of all associated costs to ease the economic burden on participating businesses. The Mayor's order recognized the Port's existing authority to create a similar program and authorizes a waiver of fees normally associated with use of such areas.

On June 15, 2020, in conjunction with the City's Shared Spaces program, the Port launched the Port's Shared Spaces Program ("Port's Shared Spaces Program") which offered temporary licenses for the use of Port outdoor space for business operations like outdoor dining and retail pickup. To date, 22 businesses are taking advantage of the program. The majority of the participants are restaurant tenants of the Port, some of which served outdoor tables before the pandemic. Consistent with Port Commission delegations to staff for these Port tenant outdoor dining areas, these restaurant tenants generally pay the same percentage rent to Port for indoor or outdoor dining without an additional fee. Port staff continued this practice for new outdoor spaces pursued by Port tenants under the Port's Shared Spaces Program.

As the winter 2020 months approached, the City extended the Shared Spaces Program and fee waivers through June 30, 2021 and the Port Commission approved a similar

¹ It is important to note that restaurants with seating located within Bay Conservation and Development Corporation's jurisdiction must also receive a BCDC permit. BCDC's jurisdiction does not cover the non-Port tenants that are primary subject of this staff report.

waiver for non-Port tenants under Resolution 20- 50. In June 2021, the Port Commission extended the fee waiver for non-Port tenants until December 31, 2021 to continue to align with the City's fee waivers (Resolution 21-26).

On July 13, 2021, the Board of Supervisors unanimously passed legislation introduced by Mayor Breed to make the Shared Spaces program permanent. Under the City's permanent Shared Spaces Program, permit and license fees will be waived for the next 4 to 15 months, depending on the type of space. Under the ordinance, fees for sidewalk space are waived until April 30, 2022.

ANALYSIS

At this time, the following 6 of the 22 businesses participating in the Port's Shared Spaces Program operate restaurants on privately-owned property abutting Port property and are utilizing Port outdoor space solely for customer seating: Delancey Street, Ozumo, Angler/Smokehouse, Perry's, Ben & Jerry's, and the Midway. Previously, Boulevard restaurant was also part of the Port's Shared Spaces program, but the restaurant is now closed for renovations. There are other such businesses elsewhere along the Port's portfolio such as the southern sidewalk of Jefferson and the western sidewalk of Illinois, though none of those businesses have requested a license for outdoor use at this time.

The non-Port tenants currently operating occupy approximately 24,000 square feet of sidewalk or street space. To date, the Port has waived approximately \$380k in license fees since the Shared Spaces Program has been in effect for this group of restaurateurs. A fee waiver extension for the additional four-month period from January 1, 2022 through April 30, 2022 would equate to an additional approximately \$85k in waived license fees, assuming the current participants.

Based on the Port's experience to date and the Port's Shared Spaces Program's success in facilitating continued commerce and visitorship on and near Port property, the Port staff proposed to continue alignment with the City's program by extending fee waivers for the Port's Shared Spaces Program on the same general timeline

Providing an extension of the fee waiver for this group of restaurateurs through April 30, 2022 will provide some certainty and support for these small business as they regain their footing and provide equitable access to the program for non-Port tenants who would be able to utilize the right-of-way adjacent to their premises without fees If not on Port property.

Port Staff Recommendation

Port Staff recommend the Port Commission's adoption of the attached resolution, which would confirm Port staff's ability to extend no-fee licenses for use of outdoor space under the Port's Shared Spaces program to non-Port tenants who abut Port property through April 30, 2022. Prior to the issuance of an extended fee waiver, these licensees must resolve any unsettled disputes.

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

RESOLUTION NO. 21-52

- 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, On February 26, 2020, Mayor London Breed issued the Proclamation by the Mayor Declaring the Existence of a Local Emergency (the "Mayor's Emergency Declaration") under Sections 8550 et seq. of the Government Code, Section 3.100(13) of the San Francisco Charter, and Chapter 7 of the San Francisco Administrative Code, establishing the existence of an emergency within the City and County of San Francisco (the "City") due to the ongoing spread of COVID-19; and
- WHEREAS, On March 16, 2020, the City Health Officer issued an Order (the "March 16 Order") directing all residents to remain at their place of residence, except to conduct Essential Activities, Essential Businesses, and Essential Government Functions (as defined in the March 16 Order); and
- WHEREAS, Since that time, the Mayor and the Health Officer have regularly updated these orders in order to protect public health and re-open the economy; and
- WHEREAS, In response to these emergency measures and the severe impacts on Port's tenants, the Port has provided several relief measures including a Broad-Based Rent Deferral Program (Resolution 20-18), an Opt-In Extended Deferral Program (Resolution 20-30), a Rent Forgiveness Program for eligible Percentage Rent Tenants; Maritime Tenants; and Local Business Enterprise Tenants (Resolution 20-41); and
- WHEREAS, As part of an emergency response, on June 15, 2020, the Mayor created the City Shared Spaces Program to temporarily allow outdoor dining and retail operations on sidewalks, streets and in other public places at no cost; and
- WHEREAS, To align with the City Shared Spaces program, the Port launched the Port Shared Spaces Program on June 15, 2020 and staff issued temporary no-fee licenses to 22 businesses seeking use of abutting outdoor space under Port jurisdiction; and

WHEREAS, In November 2020, the Port Commission adopted Resolution 20-50 which waived fees on a temporary basis until June 30, 2020 for Shared Spaces licenses for restaurateurs located on private property abutting Port property and provided that license fees already paid under a pre-existing Port license would be eligible for equivalent credit on any fees due after the expiration date of the waiver period in order to align with the Port's other tenant relief programs; in June 2021, the Port Commission extended the fee waiver until December 31, 2021 under Port Commission Resolution 21-26; and

WHEREAS, On July 13, 2021, the Board of Supervisors unanimously passed legislation to make the Shared Spaces program permanent (Ordinance No. 99- 21); under the ordinance, fees for use of sidewalk space are waived until April 15, 2022; and

WHEREAS, The Port's public trust mission benefits from the continuation of visitor-serving commercial activities both on and adjacent to Port property, as it encourages continued visitorship and enjoyment of the waterfront; and

WHEREAS, Port staff recommends the approach set forth in this Resolution to continue to align the Port's administration of its sidewalks and streets with the City Shared Spaces Program; now therefore be it

RESOLVED, That the Port Commission hereby approves the extension of a fee waiver for non-Port tenants in connection with the Port's Shared Spaces Program until April 30, 2022 as further described in this Resolution and the Memorandum to the Port Commission dated December 10, 2021.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 14, 2021.

Secretary