




MEMORANDUM

October 7, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of a proposed retroactive license (License 16970) with a reduced fee with San Francisco Community Fishing Association, A California Non-Profit Corporation for 2,424 Square Feet of Shed Space and 1,602 Square Feet of non-Exclusive Apron Space at Pier 45 Shed D on a month to month basis

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-50

EXECUTIVE SUMMARY

The availability of flake ice for the packing and storage of seafood products at Fisherman's Wharf during an active fishing season is a strategic priority for the Port of San Francisco, and vital to the economic viability of the commercial fishing industries operations. As the small vessels which make up the majority of the Port of San Francisco's commercial fleet lack onboard refrigeration systems, flake ice is required to preserve and transport their catch to market. Without a stable supply of affordable ice, the fleet would be placed at a significant competitive disadvantage with other fisher's operating from ports throughout northern California.

Beginning in 2011, the Port entered into License 14987 with the San Francisco Community Fishing Association (SFCFA) for use of space at Pier 45 Shed D, which included rental of the Port-owned ice machine. Originally built in the 1970s, the ice machine is large, multi-part flake ice production and distribution apparatus that occupies Bay D-4 at Pier 45 Shed D. Under the terms of the license, SFCFA was permitted to use the ice machine to produce and sell bulk ice to the commercial fishing fleet at competitive prices. SFCFA was obligated to maintain the ice machine, as well as provide monthly reports of the revenue

generated by their ice sales. In October of 2011, SFCFA requested a temporary reduction in its monthly license fee, which the Port Commission granted by Resolution 11-63.

As the end of the license term approached, Staff relied on the delegation in Resolution 11-63 to extend the license for an additional year at the reduced rate. And, as SFCFA remained in good standing and the fishing fleet continued to need ice, Staff repeatedly amended the license over the next five years at the reduced rate relying on PC Resolution 11-63 to extend the agreement, most recently with the Sixth Amendment in September of 2016. However, the license finally expired on September 30th, 2019, and no new agreement has been executed to cover SFCFA's continuing use of the space since that time. During this time period without an agreement, SFCFA continued to fulfill its prior obligations as if the agreement was still in place, including making payments of the monthly fee, maintaining appropriate insurance coverage, and maintaining the license area. Therefore, Port staff now propose to enter into a new retroactive month to month license agreement with SFCFA to cover the from period October 1, 2019, and to allow use of the space and rental of the ice machine to continue the existing practices as outlined below.

PROPOSED LICENSE TERMS

<i>License:</i>	16970
<i>Licensee:</i>	San Francisco Community Fishing Association, A California Non-profit Corporation
<i>License Area:</i>	Parcel A: 2,424 square feet of Shed space, including rental of the Port-owned ice machine Parcel B:1,602 square feet of Non-Exclusive Apron Space
<i>Length of Term;</i> <i>Expiration Date:</i>	Month to Month and subject to Port's termination right, but no later than December 31 st , 2023
<i>Commencement Date:</i>	October 1 st , 2019
<i>Monthly License Fee:</i>	Six Hundred Dollars and No Cents (\$600.00), commencing on October 1, 2022. The License Fee due hereunder will be increased by no less than three percent (3%) on each October 1 st .
<i>Security Deposit:</i>	Three Thousand Six Hundred Thirty-Six Dollars and No Cents (\$3,636.00). Note, this amount is slightly less than the Port now has on hand under the Original License. Port will apply the balance to fees next due until exhausted.

<i>Permitted Activity:</i>	The License Area shall be used solely for the production, sale, and distribution of bulk ice and for no other purpose. The use of the apron shall be limited to truck loading and unloading operations. Licensee's operation must not obstruct access to adjacent loading docks or access to the Pier 45 Sheds. No later than five (5) days after the last day of each calendar month in which this License is in effect, Licensee shall provide the Port a written summary of total tonnage sold and monthly sales totals for the prior calendar month .
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee – No Exceptions
<i>Utilities and Services:</i>	Port shall pay the actual cost of electrical service to the License Area of approximately \$100,000.00 Annually. The cost of all other utilities shall be the sole responsibility of the Licensee – No Exceptions
<i>Form License; City Requirements</i>	The license shall be on the Port's form license and include all standard Hazardous Materials, Insurance, Indemnity and Release, Damage and Destruction and all current City ordinances and requirements as necessary.

BACKGROUND

The Ice Machine is large, multi-part Flake Ice production and distribution apparatus originally built in the 1970s. It occupies the entirety of Bay D-4 at Pier 45 Shed D; Consisting of a chiller system for the production of Ice, a rake system for the harvesting of the Ice, and an augur system for the distribution of the Ice. The asset was initially installed, owned and operated by a prior tenant and came to be owned by the Port when it was abandoned in place by a successor tenant in February 2011. At that point, the Port gained title to the Ice Machine along with the various other improvements that had been installed by various tenants in the space.

While the ice machine has been operating continually since the 1970s, the economics of running the ice machine has been very challenging for each successive tenant and the Port has historically offered favorable terms for the licensing of the associated space and equipment to encourage the continuous availability of Ice to the commercial fleet. These concessions have included reducing the monthly license fee for the use of the space, Port paying the utility costs associated with the production of ice, and the Port making emergency capital investments to extend the useful life of the ice machine beyond routine maintenance and repair. Port's capital investments have included the replacement of the Ice Rake System in 2011 for approx. \$12,500.00, the replacement of the Condenser Unit in 2019 for an approximate cost of \$20,500.00, and the replacement of the Ice Chains in 2021 for an approximate cost of \$4,500.00. These investments ensured the continuity of ice production and extended the useful life of the ice machine far beyond its original design life.

In May 2011, to ensure the continuity of icemaking operations in the harbor in anticipation of the upcoming Salmon Season, the Port entered into License 14987 with the San Francisco Community Fishing Association (SFCFA) to lease Pier 45 Shed D-4, including the Port-owned ice machine. The license was executed in compliance with the requirements of the Parameter Rental Rates Schedule and SFCFA paid parameter rates for the space. However, in October of 2011, SFCFA requested a fee reduction (from \$2,192.44/month to \$500/month) to allow it to recover from the initial start-up problems and become better established as an efficient and reliable ice supplier. Based on its findings that SFCA had expenses to address deferred maintenance and repair for the ice machine, and because a viable ice machine and a good supply of ice are essential components for the success of the Port's fishing industry and important to the Port's maritime and trust mission, the Port Commission approved an amendment to amend the license to temporarily reduce the fees to below then approved monthly rates until September 30, 2012 (PC Resolution 11-63) (as amended, the "Original License").

Resolution 11-63 also delegated to the Executive Director, in consultation with the City Attorney, the authority to enter into any additions, amendments or other modifications to the License that the Executive Director determines are in the best interests of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the License and First Amendment contemplate and effectuate the purpose and intent of the Resolution, such determination to be exclusively evidenced by the execution and delivery by the Executive Director of the First Amendment. Port Staff relied on this delegation to extend the Original License on an annual bases with the reduced rate until September 30th, 2019 when the Original License finally expired. Notwithstanding such expiration, SFCA continued to operate as if the Original License was still in effect, including the payment of fees to the Port.

The proposed reduced license fee amount for the new license is based on the rate in the Original License adjusted for inflation. As staff understands the current economics, SFCFA sells the ice at cost to support the local fleet and is likely not making any money from the operation of the ice machine. The current parameter rental rate for this type of space would be the Fish Processing & Wholesale Industry Rate for Pier 45 Shed which is currently set at \$1.50-\$1.75 PSF monthly. This rate is not economically feasible for this location as that rate was set using methodology for active fish processing spaces and does not properly reflect the economics of commercial ice production.

SFCFA is in good standing. It has completed required repairs to the ice machine, always made timely payments, and maintains proper insurance coverage.

Next Steps

With the proposed new license in place, Port staff can direct its efforts towards the long term solution of replacing the existing ice machine. To that end, Port staff has initiated a capital project to decommission and replace the ice machine, with worked targeted to begin in May of 2023. Port staff will be returning at a future Port Commission meeting to make an information presentation on the replacement ice machine. Any replacement solution must make available to the fleet adequate capacity of Ice, including redundant

capacity to ensure the continuity of operations throughout the various fishing seasons. With these guiding principles in mind, Port plans to demolish and replace existing ice machine during May 1st through July 1st of 2023 during the gap between herring and salmon seasons. The replacement ice machine system will be based around a pair of new Ice Makers with a capacity of approximately 20 tons each operating in tandem and utilizing the condenser system that the Port financed in 2019 and other still-serviceable parts of the equipment. Advancements in refrigeration will allow the modern Ice Makers to occupy approximately the same footprint as the existing ice machine. Additional Energy Efficiency upgrades would be contemplated, such as the direct drawing of San Francisco bay water for ice making, the installation of a waste ice energy recovery system, and the insulation of the ice storage area. All of which would significantly increase the energy efficiency of the machine significantly.

STRATEGIC OBJECTIVE

The proposed license agreement supports three key goals of the Port's Strategic Plan:

- *Engagement*: Promote the richness the Port has to offer through education, marketing, and maintaining strong relationships with Port users and stakeholders.
- *Economic Vitality*: Attract and retain maritime and non-maritime commerce to contribute to the long-term viability of the Port and the City.
- *Environmental Stewardship*: Practice environmental stewardship to limit climate change and protect the bay.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to enter into proposed retroactive License No. 16970 with a reduced monthly rate with a term from October 1, 2019 to December 31, 2023 between the San Francisco Community Fishing Association and Port.

Prepared by: Demetri Amaro,
Maritime Business Development Manager

For: Dominic Moreno,
Assistant Deputy Director of Maritime

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

RESOLUTION NO. 22-50

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, After being extended for multiple years, Port License 14987 with San Francisco Community Fishing Association for space located at Pier 45 Shed D-5 in Fisherman's Wharf in the City and County of San Francisco, CA expired on September 30, 2019; notwithstanding such expiration, San Francisco Community Fishing Association continued to operate as if the license was still in effect; and

WHEREAS, Port staff considers San Francisco Community Fishing Association to be in good standing; and

WHEREAS, Port Staff has negotiated the terms of a new license agreement (License 16970) with a month-to-month term for approximately 2,424 Sq Ft of Shed Space and 1,602 Sq Ft of Non-Exclusive Apron Space for the production and sale of bulk ice at a reduced rental rate as further described in the Memorandum to the Port Commission dated October 11, 2022 ; and

WHEREAS, The new license must be retroactive to cover the period from October 1, 2019 when the original license expired; and

WHEREAS, The use is a continuation of the existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act; and

WHEREAS, Port Staff recommends approval of proposed License 16970 with San Francisco Community Fishing Association because the availability of Ice to the Commercial Fleet during active fishing seasons is a strategic priority for the Port of San Francisco, and vital to the continued health of the commercial fishing fleet; and now therefore be it

RESOLVED, The Port Commission hereby approves the terms of proposed retroactive License No. 16970 with San Francisco Community Fishing Association for a reduced rate on a month-to-month basis for approximately 2,424 Sq Ft of Shed Space and 1,602 Sq Ft of Non-Exclusive Apron Space for the production and sale of bulk ice on the terms and conditions described in the Memorandum to the Port Commission dated October 11, 2022 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 License that the Executive Director, in consultation with the City Attorney, determines

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 October 11, 2022.

Secretary