

MEMORANDUM

March 3, 2011

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Ann Lazarus, Vice President
Hon. Francis X. Crowley
Hon. Leslie Katz

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of the Port of San Francisco Retail Leasing Policy

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

Background

At its September 28, 2010 meeting, Port staff delivered an informational presentation to the Port Commission describing the Port's current Policy for Leasing of Retail Business Sites ("Current Retail Leasing Policy"). The current policy, adopted in 1993, is attached as Exhibit A.

Prompted by recommendations offered by the Board of Supervisors Budget Analyst Harvey Rose, Port staff undertook a review of the Current Retail Leasing Policy and recommends a number of changes to the policy as shown in Exhibit B ("Proposed Retail Leasing Policy").

At its September 28, 2010 meeting, the Port Commission encouraged Port staff to review the proposed policy with the Fisherman's Wharf Advisory Group ("FWWAG"). That meeting was scheduled January 18, 2011 at Scoma's. Port staff presented the Proposed Retail Leasing Policy and received no substantive input to the policy. One member of the public queried about the level of outreach Port staff have undertaken regarding the Proposed Retail Leasing Policy and Port staff described the process of hearing an informational item at the Port Commission, followed by a presentation at FWWAG, followed by a proposed Port Commission action item.

This report summarizes the Proposed Retail Leasing Policy.

2011 Proposed Retail Leasing Policy

Scope of Retail Leasing Policy: The proposed policy applies to both maritime and non-maritime retail tenancies.

Competitive Solicitation: Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1, which generally requires an award of the subject lease through competitive bidding, “except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible.”

When conducting a competitive solicitation, Port staff will establish criteria for qualified responses to the competitive solicitation; provide public notice of the opportunity; invite local businesses to participate; hold a pre-submittal conference; evaluate responses based on published criteria; and present each lease with a successful respondent to the Port Commission and the Board of Supervisors (if required) for approval.

Non-Retail Tenants Seeking to Become Retail Tenants: Port staff will entertain proposals by existing non-retail tenants to become retail tenants only when the proposed use is consistent with the Port’s Waterfront Land Use Plan and the Port Commission first approves a resolution authorizing Port staff to enter into a sole source negotiation for a retail use.

Existing Retail Tenants – Renewal Prerequisites: Port staff will evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port’s future plans for the site, and tenant history. Tenants must be in compliance with the Port’s **Tenant in Good Standing Policy** to be considered for a new or extended lease. Changes in or intensification of use must be consistent with Port, San Francisco Bay Conservation and Development Commission and other regulatory applicable limitations.

Port staff may negotiate with an existing retail tenant under the following circumstances:

1. For a short term lease extension, not to exceed 3-5 years, during any period when the U.S. economy is in a recession or San Francisco Bay Area is experiencing a commercial real estate downturn. Lease extensions will adjust base and percentage rents to then-current market-rates as adopted by the Port Commission.
2. Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of 10 years or the time required to amortize planned improvements. In exercising this extension option, the Port Commission will make a finding that the proposed capital improvements to Port property serve a public purpose.
3. If a tenant fails to meet the Port’s criteria for a direct negotiation exception, a lease extension or renewal may have a term of up to 5 years without any

additional extension option, if the Port has conducted a Request for Interest and received no expressions of interest.

In exercising each of these renewal or extension options, the Port Commission will make a finding that it is impractical to bid the subject lease, consistent with the provisions of S.F. Administrative Code Section 2.6-1.

Direct Negotiation Exception: Port staff may not begin lease negotiations with an existing tenant until the Port Commission has authorized sole source negotiations with that tenant. Before presenting the Port Commission with a direct negotiation request, Port staff will determine that the tenant is in good standing, evaluate whether the tenant is the most suitable economic tenant, and receive and review a business plan and the Tenant's historic audited financial statements and/or tax returns.

The Port will not enter into direct negotiations with an existing tenant that has paid below average rent per square foot to the Port (base rent and percentage rent) in the prior three (3) year period compared to retail tenants at similar locations on Port property.

Capital Improvement Requirements for Direct Negotiations: The Tenant must make a substantial capital investment approved by the Port, subject to the following:

- Improvements may include substructure improvements, improvements to the core and shell of the lease premises, Americans with Disabilities Act access to the facilities, upgrades to utilities serving the premises or improvements to surrounding Port property;
- The Tenant will quantify the cost of the proposed capital improvement as a percentage of leasehold value;
- The proposed capital improvement must be sufficient to allow Port staff to make a finding that the improvement serves a public purpose; and
- The Tenant must demonstrate the financial capacity to pay for the proposed capital improvement and demonstrate that such improvement can be depreciated.

The Tenant will not qualify for rent credits for proposed capital improvements that are the basis for direct negotiations. Port staff will evaluate facility conditions and may propose additional investments that would justify a new lease with the existing tenant.

Lease Requirements: The renewed or extended lease will be subject to certain lease provisions, including Port Commission-approved boilerplate lease provisions, detailed in Attachment B. The Tenant will pay base and percentage rent that is market rent for comparable uses and locations on gross retail income, retail sales and concession revenues, including subtenant rents and sales.

Conclusion

Port staff recommends approval of the attached resolution approving the Proposed Retail Leasing Policy.

Port staff recommends submitting the policy for consideration at a hearing of the San Francisco Board of Supervisors.

Prepared by: Brad Benson
Special Projects Manager

Prepared for: Monique Moyer
Executive Director

Exhibit A
1993 Policy for Leasing of Retail Business Sites, adopted by Resolution 93-52

Exhibit B
Proposed 2011 Retail Leasing Policy

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

RESOLUTION NO. 11-15

- 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, Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1, which generally requires an award of the subject lease through competitive bidding, "except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible;" now, therefore, be it
- RESOLVED, That the Port Commission hereby repeals Resolution 93-52; and be it further
- RESOLVED, That the Port Commission hereby adopts the 2011 Port of San Francisco Retail Leasing Policy attached hereto as Exhibit B and authorizes Port staff to negotiate new retail agreements or amendments to existing retail agreements under the circumstances described in the new Policy; and be it further
- RESOLVED, That the Port Commission hereby authorizes Port staff to submit the policy for consideration at a hearing of the San Francisco Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 8, 2011.

Secretary

SAN FRANCISCO PORT COMMISSION

AGENDA SUMMARY SHEET

SUBJECT: Leasing Policy for Retail Sites Meeting Date: 4/28/93
 Agenda Item No: 5D
 Res. No.: 93-52
 SUBMITTED BY: Dorothy Schimke, Manager
 Leasing & Commercial Property Management

AGENDA CLASSIFICATION

<input type="checkbox"/> Executive Director's Report	<input type="checkbox"/> Engineering & Maintenance
<input type="checkbox"/> Finance & Administration	<input type="checkbox"/> Planning & Research
<input checked="" type="checkbox"/> Tenant Services	<input type="checkbox"/> Legal
<input type="checkbox"/> Cargo Services	<input type="checkbox"/> Other


BACKGROUND

The Port of San Francisco is responsible for management of a diverse waterfront. While the primary focus of the Port is to foster the growth of water related industries, a wide spectrum of other uses have developed through time and become an integral part of the Port. Due to this diversity, the San Francisco waterfront now offers the population of the San Francisco Bay Area the opportunity for development of retail, commercial and industrial businesses, recreational activities, public access and tourism.

Retail businesses of the Port include such operations as restaurants, galleries, ship chandleries, souvenir shops and excursion vessel operations. Many restaurants coexist along the

(To Be Continued)

RECOMMENDATION: Adopt the attached resolution approving the proposed policy for leasing of retail business sites.

EXECUTIVE DIRECTOR'S RECOMMENDATION	COMMISSION ACTION REQUIRED	COMM. ACTION TAKEN
	<input type="checkbox"/> Motion	Date _____
	<input type="checkbox"/> Resolution	Approved _____
	<input type="checkbox"/> Ordinance	Disapproved _____
	<input type="checkbox"/> Information Only	_____
		SECRETARY:

waterfront serving the public, tourists and workforce of the City. They vary from the quick and economical hamburger stands to delicatessens to lavish seafood restaurants. All represent a choice of lifestyle to those who frequent them and a livelihood to those who operate them.

Such tenancies generate cash flows for the Port through percentage rents which are essential for balancing the operating budget and funding capital improvements which support the Ports maritime mission. Such capital improvements include:

- * cargo facility development
- * modernization of the deteriorating infrastructure
- * development of public access amenities which encourage the public to visit and use the waterfront.

Several current tenants operate businesses on Port property under a month to month lease whose fixed term has expired. Others are on a month to month holdover of a lease whose fixed term has expired. Still others operate under an existing fixed term lease scheduled to terminate in the near future. Many of these tenants have approached the Port to negotiate a new fixed term lease which would allow them to finance capital improvements needed to expand or improve their businesses.

Lacking an adequate lease term inhibits their ability to develop long term business plans and to obtain financing which is required to implement such plans for growth and remain competitive. A direct result is a constriction of the tenant's ability to increase their gross sales and consequently, the Port's revenue stream generated from percentage rents.

Although the Port would like to work with existing tenants to improve Port property and business, this interest must be balanced against the Port's affirmative responsibility to afford an opportunity for a waterfront business to all, through competitive bidding and community outreach. While affirmative action is highly desirable, it must be recognized that making available an existing business location through the bid process has the potential to interrupt an ongoing concern and threaten a small business and create vacancy -- all of which will interrupt an existing revenue stream.

In order to address these issues in an equitable fashion, Port staff is proposing a new policy to be known as the Policy for Leasing of Retail Business Sites. A copy of this policy is attached for review. This policy offers the Port a mechanism for balancing the potential and the needs of existing tenancies and new tenancies while safeguarding stability in its revenue stream. The policy is based on criteria upon which the Port could determine in what instances it should negotiate with one party (a direct negotiation exception) rather than utilizing the bid process.

The proposed retail leasing policy begins with a reaffirmation of the Port's commitment to the general policy of equal opportunity through outreach and competitive bidding. The direct negotiation exception of the retail leasing policy would be applicable in instances where an existing tenant is committed to making a large capital investment in its business and it has approached the Port to negotiate a long term lease. The policy recognizes that in order to gain financing for such investments, a lease term of sufficient length is required and therefore, the term would be justified by the size of the investment. To qualify for direct negotiation, the tenant must be:

1. A tenant in good standing.
2. A tenant committed to making a significant investment supported by a sound business plan.
3. A tenancy in the best economic interest of the Port.
4. A tenant with a good record of affirmative action and nondiscrimination and committed to future compliance.

Integral to the definition of a "tenant in good standing" is whether or not the tenant is in compliance with affirmative action guidelines. The tenant should have a good record regarding nondiscrimination and affirmative action in employment, purchasing and contracting, including as a minimum standard, compliance with existing City and State laws and policies regarding employment. In addition, the tenant must commit to a future affirmative action plan including goals, outreach efforts, reporting and penalties if the tenant fails to comply with the plan.

Finally, several other relevant considerations should be taken into account such as compatibility with Port planning efforts, years of service to the community and communities ties.

If the tenant meets all these criteria, before the staff may enter into direct negotiations with the tenant the Commission must make a finding that the benefits of direct negotiations override the benefits of competitive bidding.

The Leasing Policy for Retail Business Sites also provides a mechanism for analyzing those long time tenants who wish a fixed term lease but are not prepared to commit to major investments in their business at this time. Under the proposed policy, these tenants would be permitted a one-time opportunity to negotiate a three year lease if they met the criteria for "tenants in good standing" and affirmative action. The criteria regarding significant new investment in the property would not be applied to these tenants at this time. This opportunity would be offered for one year only, after which time all the criteria, including the investment criteria, would apply. This mechanism is appropriate in that it allows a short term lease providing sufficient time for the tenant to develop a business plan and strategy for capital investment. It also encourages all Port tenants to expand their business and improve Port property and revenues.

PORT OF SAN FRANCISCO

POLICY FOR LEASING OF RETAIL BUSINESS SITES
APRIL 1993

I. GENERAL POLICY

It is the general policy of the Port to foster and encourage full and equitable opportunities for leasing of retail sites to all businesses that wish to develop a waterfront business along the San Francisco waterfront. This is accomplished in accordance with the City's and Port's policy to competitively bid retail sites pursuant to the Administrative Code Section 23.24. This process is based on a good faith effort to reach out to the whole community including disadvantaged local, minority and women owned businesses through the following steps:

- A. Creation of clear bid specifications.
- B. Public Notice through Port action to proceed with the bid.
- C. Advertising through the purchaser's newsletter, minority and womens newspapers.
- D. Outreach to minority, women and disadvantaged business community groups.
- E. Pre-bid conference.
- F. Bid Opening conference
- G. Evaluation of bids based upon pre-determined minimum qualifications as set forth in the bid package.
- H. Approval by Commission of apparent successful bidder.

II. DIRECT NEGOTIATION EXCEPTION

An exception to the general policy permits the Port to negotiate an extension of an existing tenancy rather than competitively bid the lease as set forth in the Administrative Code when:

- A. The existing tenant is in good standing.
- B. The tenant is committed to making significant capital investment in its leasehold which will benefit the Port.
- C. The benefits of direct negotiation outweigh the benefits of competitive bidding.

III. APPLICATION OF DIRECT NEGOTIATION POLICY

The direct negotiation policy may be applied when:

- A. A tenant in good standing approaches the Port with a sound business plan requiring a capital investment in its leasehold.
- B. The tenant has a month to month lease or a lease term insufficient to support its business plan.
- C. The tenant is the best economic tenant available.

IV. IMPLEMENTATION

When approached by a tenant with a request for direct negotiation, the Port will:

- A. Determine if the tenant is in good standing. A tenant in good standing is defined as a tenant who:
 - 1. Complies with the use provisions and does not allow any unpermitted uses.
 - 2. Maintains the leasehold in good and sanitary condition.
 - 3. Has a good payment history and a current account.
 - 4. Complies with all insurance requirements.
 - 5. Keeps accurate records and cooperates with the audit process.
 - 6. Complies with the regulatory permit process.
 - 7. Provides a dependable level of goods and services.
 - 8. Utilizes good business practices.
 - 9. Meets other relevant factors specific to the business.
 - 10. Has provided a welcoming atmosphere to customers of diverse background and ethnicity.
- B. Evaluate the tenant to determine if it is the best economic tenant based on:
 - 1. Sales and revenues to Port.
 - 2. Survey of rent comparables.
 - 3. Stable growth pattern.
- C. Evaluate the business plan including review of:
 - 1. Cost estimates of capital improvements.
 - 2. Revenue projections.
 - 3. Marketing plan.
- D. Affirmative Action
 - 1. Review of the tenant's existing practices regarding nondiscrimination in public accommodation and affirmative action in employment, purchasing and contracting, including as a minimum standard, compliance with existing City and State laws and policies regarding employment.
 - 2. Commitment by the tenant to an affirmative action plan which will become a material condition of the new lease and which includes the following elements:
 - a) Affirmative action goals in hiring, purchasing and contracting including capital improvements;
 - b) Requirement for affirmative action outreach by tenant;
 - c) Requirement for tenant to document its good faith efforts to comply;
 - d) Ability to assess penalties for noncompliance.

- E. Staff, which will include the EEO Programs Specialist, shall report the results of the evaluation of each of the above criteria in Sections A-D to the Commission. In order for staff to enter into direct negotiation, the Commission must make a finding that the benefits of direct negotiation outweigh the benefits of competitive bidding.

V. TRANSITION PERIOD

There will be a one-time opportunity for existing tenants to convert a license or a month to month lease to a short term lease without immediate capital investment.

- A. To qualify for this opportunity the tenant must*:
1. Be a tenant in good standing as defined in section IV A hereof.
 2. Be in compliance with affirmative action criteria as outlined in section IV D hereof.
- B. A lease negotiated pursuant to this Section V will be limited to a three year term.
- C. The tenant must enter into a lease within one year of the adoption of this leasing policy by the Port.
- * The qualifications for this one-time opportunity to negotiate a short term lease do not include the requirements set forth in Section IVB, IVC, or IVE.

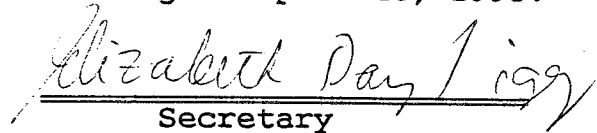
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PORT COMMISSION
RESOLUTION NO. 93-52

WHEREAS, The general policy of the San Francisco Port Commission is to foster and encourage equitable opportunities for leasing of retail sites to disadvantaged businesses through the competitive bid process in accordance with Chapter 12D of the Administrative Code and this general policy must be balanced with the need to negotiate directly with existing retail tenancies in certain instances; and

WHEREAS, the Port Commission has developed a Policy for Leasing of Retail Business Sites as set forth in the attached policy statement;

NOW THEREFORE BE IT RESOLVED, that the Commission hereby approves and adopts the Policy for Leasing of Retail Business Sites.

I HEREBY CERTIFY that the foregoing resolution was approved by the San Francisco Port Commission at its meeting of April 28, 1993.


Secretary

Port Commission

PORT OF SAN FRANCISCO
RETAIL LEASING POLICY
ADMINISTRATIVE GUIDELINES

I. Tenant in Good Standing is defined as a tenant who:

- A. Complies with the use provisions and does not allow any unpermitted uses.

Example: Tenant leases property from Port. The use clause of the lease provides for the sale of fine art. The tenant, in addition to fine art, begins selling posters, post cards and souvenirs without the written consent of the Port. This tenant would not be in compliance with the use provisions of the lease

- B. Maintains the leasehold in good and sanitary condition. A tenant in compliance would be one who:

1. Keeps the premises clean and litter free.
2. Makes necessary repairs promptly to maintain curb appeal and a presentable business atmosphere.
3. Complies with health and safety requirements.
4. Practices preventative maintenance.
5. Reports maintenance which is Port's responsibility to Port promptly.

- C. Has a good payment history and a current account.

1. A tenant with a good payment history is one who consistently pays all rents before they become delinquent in accordance with the Port's Collection Policy (see attached) and does not tender checks which will be returned for non-sufficient funds.
2. A tenant with a current account is a tenant who has no delinquent invoices.

- D. Complies with all insurance requirements. Compliance requires maintenance of:

1. A current certificate of insurance verifying that all coverages are in place with no less than the minimum coverage set forth in the lease.
2. A certificate with all required endorsements.
3. Any additional insurance coverage as determined by Port based on industry standards for region and use.

- E. Keeps accurate records and cooperates with the audit process. Proper reporting procedures include:

1. Compliance with reporting timelines as set forth in the Port's Collection Policy.
2. Maintenance of records according to Generally

- Accepted Accounting Practices.
- 3. Cooperation with the City auditors.
- 4. Making records available to City auditors as requested.
- 5. Comply with any conditions recommended pursuant to the City's audit process.

F. Complies with regulatory permit process. A tenant in compliance will:

- 1. Attain any required permits including but not limited to:
 - a. Port Building Permit
 - b. CEQA Permit
 - c. BCDC Permit
 - d. Conditional Use Permit
 - e. Fire Department Permits
 - f. Health Department Permit
- 2. Adhere to the conditions of the required permits.

G. Provides a dependable level of goods and services. A tenant doing so maintains:

- 1. Consistent products and services.
- 2. Consistent hours of operation.
- 3. Proper inventories.
- 4. Sufficient and well trained staffing.

H. Utilizes good business practices. A tenant doing so:

- 1. Maintains current business accounts/pays vendors promptly.
- 2. Provides a safe environment for customers.
- 3. Practices ethical employer/employee relations.
- 4. Utilizes ethical pricing practices.
- 5. Is responsive to market trends.

I. Meets other relevant factors specific to business.

Example: Tenant leases property from Port for the purpose of operating excursion vessels from the North Ferry Terminal. The lease provides for the loading of stores onto the vessel from the terminal under certain conditions, i.e., during set hours, within a set time limit, and using specified equipment which will not overload the barge. Tenant would be required to comply with the conditions set forth in the lease.

J. Provides a welcoming atmosphere to customers of diverse background and ethnicity. Such a tenant is one who:

- 1. Has a record of providing equal services to all customers.
- 2. Has not exhibited a pattern of discrimination.

MARCH 8, 2011

**EXHIBIT B
PORT OF SAN FRANCISCO
RETAIL LEASING POLICY**

Background

The Port of San Francisco ("Port") is a public enterprise committed to promoting a balance of maritime, recreational, industrial, transportation, public access and commercial activities on a self-supporting basis through appropriate management and development of the waterfront for the benefit of the public.

General Policy

The Port's Retail Leasing Policy provides entrepreneurs that wish to develop and operate a business along the San Francisco waterfront an opportunity to bid on retail lease opportunities, as described in this policy. This policy also permits the Port and its successful, existing retail operators to enter into new leases under specified conditions. Retail opportunities will be available only at locations deemed appropriate for retail activity in accordance with the Port's Waterfront Land Use Plan, as it may be amended from time to time.

Businesses on Port property include uses such as restaurants, galleries, ship chandleries, souvenir shops, food and beverage sales, clothing and apparel shops, on-going special event venues and visitor-serving excursion operators. The Port enjoys a diverse mix of retail uses that serve the public and are consistent with the Burton Act and the public trust for navigation, commerce and fisheries.

Lease revenues are essential for funding the Port's operating and capital budget, which support the Port's public trust maritime mission. The Port's retail tenancies also provide business opportunities for local merchants and employment opportunities for San Francisco residents.

Scope of Retail Leasing Policy

This policy applies to both maritime and non-maritime retail tenancies. This policy does not apply to retail tenancies in mixed-use developments on Port properties that have been master- or ground-leased by the Port Commission.

Competitive Solicitation

Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1:

SEC. 2.6-1. - POLICY RELATIVE TO APPROVAL OF LEASE AND CONCESSION AGREEMENTS. Whenever in accordance with the provisions of the Charter, any officer, board or commission of the City and County submits a proposed lease or agreement for concession privileges to be operated in or upon any property or facility of the City and County to the Board of Supervisors for its approval or disapproval, except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible, it shall be the policy of said board (1) to approve only such proposals as have been awarded to the highest responsible bidder in accordance with competitive bidding procedures, and (2) to approve only

such leases as require the lessee to provide appropriate insurance naming the City as an additional insured in a form and amount approved by the Office of Risk Management.

When conducting a competitive solicitation, Port staff will:

1. Describe a range of desired uses and establish criteria for qualified responses to the competitive solicitation;
2. Provide public notice of the competitive solicitation through the Port's website, the City's designated local newspaper for notices, and community-based media;
3. Invite local business enterprises to participate, in coordination with the Human Rights Commission and Office of Contract Management;
4. Hold a pre-submittal conference;
5. Evaluate responses and award retail leasing opportunities based on criteria specified in the solicitation package; and
6. Present each lease with a successful respondent to the Port Commission and the Board of Supervisors (if required) for approval.

Non-Retail Tenants on Port Property Seeking to Become Retail Tenants

Occasionally, existing Port non-retail tenants express an interest in opening retail businesses within or adjacent to their premises. The Port usually enters into non-retail leases without competitive bidding, based on the Port Commission's approved parameter rental rate policy and a finding, upon public hearing of the Port Commission, that bidding office, warehouse, open land or other (non-retail) leases is impractical.

While the Port understands that many of its tenants may have the business acumen and financial wherewithal to open retail businesses, commencing such a tenancy without bidding potentially conflicts with City and Port policy. Port staff will entertain such proposals only when the proposed use is consistent with the Port's Waterfront Land Use Plan and the Port Commission first approves a resolution authorizing Port staff to enter into a sole source negotiation for a retail use.

Existing Retail Tenants – Renewal Prerequisites

Existing retail tenants often request a lease renewal when a lease is expiring or the tenant desires to make capital improvements and amortize its investment over a period longer than the existing lease term. Port staff will evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port's future plans for the site, and tenant history. Tenants must be in compliance with the Port's **Tenant in Good Standing Policy** to be eligible for consideration for a new or extended lease.

Changes in or intensification of use must be consistent with the Port's Waterfront Land Use Plan, San Francisco Bay Conservation and Development Commission (BCDC) requirements and other regulatory limitations applicable to the site, including compliance with the California Environmental Quality Act. The Port, in its sole discretion, may determine that proposed changes in or alterations of use would trigger the need for a competitive solicitation.

Port staff may negotiate with an existing retail tenant in good standing under the following circumstances:

1. For a short term lease extension, not to exceed 3-5 years, during any period when the National Bureau of Economic Research has determined that the U.S. economy is in a recession or other data support a finding by the Port Commission that the San Francisco Bay Area is experiencing a commercial real estate downturn. Under these conditions, the renewals and extensions will adjust base and percentage rents to then-current market-rates as adopted by the Port Commission.
2. Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of 10 years or the time required to amortize planned improvements (using the term of the tenant's financing or, if not financed, straight line depreciation for qualified leasehold improvement property (currently 15 years) if the tenant meets the Port's criteria for a direct negotiation exception (described below). In exercising this extension option, the Port Commission will make a finding at a public hearing that the proposed capital improvements to Port property serve a public purpose.
3. If a tenant fails to meet the Port's criteria for a direct negotiation exception, a lease extension or renewal may have a term of up to 5 years without any additional extension option, if the Port has conducted a Request for Interest and received no expressions of interest from qualified parties.

In exercising each of these renewal or extension options, the Port Commission will make a finding that it is impractical to bid the subject lease, consistent with the provisions of S.F. Administrative Code Section 2.6-1.

Direct Negotiation Exception

Before entertaining a direct negotiation request for a lease renewal or extension, Port staff will:

1. Determine if the tenant is in compliance with the **Tenant In Good Standing Policy**;
2. Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a square foot basis; and
3. Request a written business plan and evaluate the plan to determine cost and value of capital improvements to Port property, viability of revenue projections including historical audited financial statements and/or the last 3 years' tax returns and use of property.

The Port will not enter into direct negotiations with an existing tenant that has paid average rent per square foot to the Port (base rent and percentage rent) in the three (3) year period immediately preceding the request that is less than the average of rents per square foot for like retail tenants at similar locations on Port property (e.g., with a tenant that generates below-average rents).

Capital Improvement Requirements for Direct Negotiations

The Tenant must make a substantial capital investment approved by the Port, according to the following conditions:

- Improvements may include substructure improvements, improvements to the core and shell of the lease premises, Americans with Disabilities Act access to the facilities, upgrades to utilities serving the premises or improvements to surrounding Port property;
- The Tenant will quantify the cost of the proposed capital improvement as a percentage of leasehold value, with actual expenditures subject to verification pursuant to lease terms;
- The proposed capital improvement must be sufficient to allow Port staff to make a finding that the improvement serves a public purpose; and
- The Tenant must demonstrate the financial capacity to pay for the proposed capital improvement and demonstrate that such improvement can be depreciated within the proposed lease term.

The Tenant will not qualify for rent credits for proposed capital improvements that serve as a basis for direct negotiations.

Port staff will evaluate facility conditions and may propose additional facility investments that would justify a new lease with the existing tenant.

Lease Requirements

1. The Tenant will pay base and percentage rent that is market rent for comparable uses and locations on gross retail income, retail sales and concession revenues, including subtenant rents and sales.
2. The Port reserves the right to approve all sub-tenancies, and all sublease revenues will be separately reported to the Port in a customary and pre-approved manner.
3. Base rent will be based on available industry comparables, site history, best site use and percentage rent history. Base rent will be adjusted annually (either as a fixed percentage increase or as a CPI percentage increase) with no provision for rent reduction or rebate.
4. The Tenant will disclose all gross revenues and related expenses and grant the Port the right to conduct periodic audits and obtain related financial reports.
5. Depending on the type of proposed capital improvements, the new term of the lease may include a construction period, with a deadline to complete required tenant improvements.
6. The Tenant will provide a tenant guarantee and a contractor's surety bond or other financial assurance approved by the Port in its sole discretion in an amount approved by the City's Risk Manager. If the Tenant fails to obtain the approval, permits or financing

of the proposed improvements in the agreed upon time frame, or fails to complete the project in any way, the Tenant may be subject to liquidated damages, lease default or other remedies as provided by the lease.

Sale of Business/Lease, Transfer or Assignment

Subject leases will include provisions that are part of the Port Commission's approved boilerplate lease, as it may be amended from time to time, including but not limited to:

1. The Port shall participate in a portion of the proceeds from the sale, transfer, assignment, restructuring, and refinancing of leaseholds.
2. The proposed transferee shall provide audited financial statements and the Port shall have the right to request a written business plan supported by market analysis.
3. The Port shall approve all ownership and capital changes at its reasonable discretion. The proposed transferee must demonstrate expertise in operating the business and maintaining the asset.
4. The proposed transferee or assignee shall jointly assume any structural, substructure repair/maintenance or seismic upgrade responsibilities that are the obligation of the seller, transferor or assignor. Upon request for the Port's consent to the transfer, sale or assignment of its lease, the Tenant shall provide a written report prepared by a Port-approved engineer detailing the current condition of the physical assets, including any deferred repairs or maintenance along with a remedial plan for repairs as a condition to the Port's consent.
5. All maintenance and/or construction work required in the original lease must be completed, with all permits closed out, prior to the request for the Port's consent, or the transfer agreement will address the obligations of the transferee to complete such work.