



MEMORANDUM

February 7, 2025

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request the Port Commission recommend that the Board of Supervisors (BOS) amend the Public Works Code to declare that Port will exclusively permit and/or license certain minor encroachments including: 1) Café Tables and Chairs Permits, 2) Display Merchandise Permits, and 3) other Minor Encroachment Permits in the sidewalk area in certain City-Accepted Port Streets, such as Mission Rock, Pier 70 and a portion of 23rd Street within the Potrero Power Station Special Use Districts.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 25-07

EXECUTIVE SUMMARY

Existing legislation and regulation for retail activations on City-accepted Port rights-of-way (ROWs) at Mission Rock, Pier 70, and other areas require tenants fronting City-accepted streets on Port land to obtain both a license from the Port, and an encroachment permit from the San Francisco Department of Public Works (Public Works).

The requirement for the Port to issue overlapping licenses on top of any Public Works commercial activation permit stems from the Port's public trust obligations as landowner.

The dual permit/license requirement also addresses the need for the Port to insure against claims associated with 3rd Party commercial activities within Port jurisdiction. Port licenses

include language required by Port's insurer indemnifying the Port against claims against 3rd party commercial tenants.

This redundant process places an unnecessary burden on retail tenants, particularly on small businesses, both in terms of the requirement to pay fees to both agencies as well as the length of time it takes to obtain approvals from two different City agencies. Further, it represents wasted staff resources with little to no benefit to the Port.

Port and Public Works staff desire to simplify post-City acceptance permitting/licensing at Mission Rock, Pier 70 and the Potrero Power Station by establishing the Port as the sole agency with jurisdiction for permitting and licensing retail activations within Port-owned and City-accepted rights-of-way within these development areas. Because Public Works is expressly empowered to issue and enforce permits by City code, the City Attorney's Office (CAO) determined that City code must be amended to allow the Port to exercise sole permitting authority. Port and Public Works would continue to coordinate permitting approvals and could further formalize such coordination in a memorandum of understanding.

STRATEGIC OBJECTIVE

The proposed legislation is consistent with the following Strategic Plan Objectives:

Equity:

By streamlining the permitting process for 3rd Party retail tenants at Mission Rock and Pier 70, many of which are locally owned small businesses.

Evolution:

By advancing development projects such as the Mission Rock and Pier 70 projects that grow real estate revenue for the Port and transform our waterfront.

Productivity:

By advancing development projects that grow the waterfront portfolio and create vibrant new neighborhoods for residents and retail and commercial tenants.

GEOGRAPHY

This legislation would apply to certain City-accepted Port streets within Mission Rock and potentially include the Pier 70 and Potrero Power Station Special Use Districts (SUDs). Exhibits 1, 2, and 3 show these areas.

At the March 12, 2024, Port Commission meeting, Port staff gave an informational presentation outlining the Port's and City's respective acceptance processes and summarized the required land use agreements needed for the City and Port to accept Phase 1 infrastructure within the Mission Rock SUD. Streamlining retail activation permits was identified as an important milestone for the larger Port and City acceptance process, which may be heard by the Port Commission in conjunction with this item.

Construction of Phase 1 streets at Pier 70 was completed in early 2024. On January 23, 2024, the Port Commission took several actions to facilitate the acceptance of recently constructed Port assets at Pier 70 (Resolutions 24-03, and 24-04). A subsequent City acceptance legislative process took effect on May 5 (BOS Resolutions 240203 and 240087).

At this time, staff are not recommending Public Works address permitting authority for retail activations for all City-accepted Port Streets and instead recommends prioritizing three potential Special Use Districts (Mission Rock, Pier 70, and Potrero Power Station) to pilot the process and ensure appropriate coordination with Public Works regarding other encroachments. Boundaries establishing Port jurisdiction at Mission Rock and Pier 70 are clearly established, and the Port anticipates these both areas will be highly activated with uses sponsored by fronting retail tenants.

The Port and Public Works are actively working on the Port of San Francisco Boundary Survey Project through which the Port seeks to better understand the Port's jurisdictional boundaries. If Port licensing of retail activations at Mission Rock, Pier 70, and/or Potrero Power Station proves successful, Port staff may return to the Commission to request the Commission recommend the BOS expand the geography where the Port holds the sole jurisdictional authority for licensing and permitting certain minor encroachments in the sidewalk areas of City-accepted Port ROW.

BACKGROUND

While the Port will continue to own fee title to the land underneath the newly constructed Mission Rock and Pier 70 streets and sidewalks after City acceptance due to its public trust obligations, standard infrastructure constructed within ROWs will be owned and maintained by the customary City agencies. For example, Public Works, Department of Technology, the San Francisco Fire Department, the San Francisco Municipal Transportation Agency, and the San Francisco Public Utilities Commission own street curbs and gutters, asphalt roadways, traffic signals, traffic signage, and utility systems. Accordingly, pursuant to each project's respective Interjurisdictional MOU Public Works will act as lead permitting agency for streets and sidewalks at Mission Rock and Pier 70 after these streets are accepted by the Board of Supervisors (BOS).

The CAO has determined that under the current regime, the Port's public trust obligations and indemnification requirements require the Port to issue an overlapping license for any retail activation permit issued by Public Works on City-accepted Port ROW at Mission Rock and Pier 70.

Both Port and Public Works staff as well as the Port's Mission Rock and Pier 70 development partners wish to streamline this process. The status quo where Mission Rock and Pier 70 tenants fronting City-accepted Port streets are required to obtain both a license from the Port, and an encroachment permit from the Department of Public Works places an unnecessary burden on retail tenants – particularly on small businesses – both in terms of the requirement to pay fees to both agencies as well as the length of time it

takes to obtain approvals from two different City agencies. It also results in wasted staff resources with little benefit to the Port.

Because Public Works is expressly empowered to issue and enforce permits by the Public Works code, the City Attorney's Office determined that City code must be amended to allow the Port to exercise sole permitting authority.

Such legislation would amend the Public Works Code to (1) exclude Port-owned and City-accepted rights of way from the Public Works café seating permit program and (2) affirmatively delegates permit authority to Port for those areas.

Staff believe the benefits achieved through in-house licensing outweigh any gain that might be achieved by outsourcing this work to sister agencies, primarily because it eliminates the confusion and burden for tenants (customers) who would otherwise be required to engage in a more costly, time-consuming process. Specific benefits are outlined below:

1. **One-stop shop** – The Port will already be issuing licenses for retail activations in certain Port open spaces in Mission Rock such as the China Basin Park Promenade and the Dr. Maya Angelou and Bridgeview Paseos. Having the Port issue licenses for the City-accepted Port ROW will lead to a more predictable and understandable approval process, especially for retailers sited in spaces that border both Port open space and City ROWs.
2. **Seamless Transition** – Prior to acceptance, the Mission Rock developer anticipates issuing sub-licenses for retail activations in the ROW under the master lease. Port staff will perform design review for these licenses issued before acceptance. If the Port is the primary agency (Option 1), these retailers can seamlessly transition their outdoor seating after the City accepts the ROWs. If Public Works were the primary permitting agency, retailers would need to obtain Public Works permits before they can use the ROW, potentially leading to disruptions to restaurant operations if permits cannot be obtained before acceptance.
3. **Unique Regulatory Framework** – Outdoor seating and other retail activations at Mission Rock are governed by the Mission Rock Design Controls which are “baked-in” to the Mission Rock Development Agreement with the City. This regulatory framework varies slightly from typical Public Works design standards, potentially leading to confusion and delay if Public Works is the lead permitting agency because Public Works Permit Plan Checkers are not in the habit of reviewing permits under Mission Rock design controls.
4. **IRS Regulations** – Streets and Paseos in Mission Rock were funded using tax-exempt bonds (a funding source only available for public infrastructure). IRS rules dictate that only 5% of these spaces may be apportioned for private uses such as outdoor dining. Exceeding the 5% threshold will become an issue if the project is audited in the future. Of the two agencies, the Port is better equipped to monitor this regulation ensuring that net retail operations in Mission Rock rights-of-way don't

exceed the 5% threshold because Public Works Permit Plan Checkers are not accustomed to monitoring tax-exempt bond requirements.

5. **Simple Permits** – Retail permit activations such as outdoor dining and sidewalk merchandise displays are relatively simple permit types to review. These permits were intentionally designed for lay people to obtain without the assistance of design professionals, attorneys, permit expeditors, etc. The relative simplicity of these permit types reduces the likelihood that an additional workload of performing permit reviews will prove overly burdensome for Port staff.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution recommending the BOS amend the Public Works code to establish the Port as the sole agency with jurisdiction to issue licenses for retail activations in sidewalks located at Mission Rock, Pier 70, and certain portions of Potrero Power Station.

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For: Wendy Proctor,
Interim Deputy Director, Engineering

Scott Landsittel
Deputy Director, Real Estate and Development

- Exhibits:
1. Mission Rock SUD Area
 2. Pier 70 SUD Area
 3. Potrero Power Station SUD Area
 4. Creative Retail Activation Examples

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

RESOLUTION NO. 25-07

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port requires private parties using Port streets or rights-of-way (ROWs) to obtain a license that, among other things, protects the Port against claims related to the private use; and
- WHEREAS, The Public Works Code requires private parties that use or encroach on City-accepted streets and rights-of-way to obtain encroachment permits from the Public Works Department that, among other things, protect the City against certain claims related to the encroachment; and
- WHEREAS, When the Board of Supervisors accepts Port ROWs on behalf of the City, the Port requires private parties to obtain licenses and the Department of Public Works requires the same private parties to obtain encroachment permits for the same activity, which process is duplicative and can discourage activation of Port ROWs; and
- WHEREAS, Vibrant streetscapes, where businesses are able to utilize public spaces for outdoor seating and merchandise displays and similar activities, foster a sense of place, encourage foot traffic, and enhance the public realm to benefit both businesses and the broader community; and
- WHEREAS, The Port Commission recognizes the critical importance of fostering active, vibrant streets that encourage social interaction, cultural engagement, and economic activity, benefiting both local residents and visitors; and
- WHEREAS, The Port Commission is dedicated to ensuring that public spaces, including sidewalks, remain universally accessible to all individuals, including people with disabilities, seniors, and families with young children, while also allowing for retail and outdoor dining activations; and
- WHEREAS, Port and Public Works staff agree that the duplicative Port license and Public Works' encroachment permit process is unnecessary and should be simplified by granting Port the sole ability to license and permit certain minor encroachments, including café tables and chairs, merchandise displays, and other minor encroachments that are not affixed to the City-accepted Port ROWs (collectively, "Port Licensed Encroachments") that are located sidewalks within certain City-accepted Port ROWs, so long as Port and Public Works collaborate and coordinate regarding licenses and encroachments generally to avoid conflicts and maintain mutual awareness between and among departments of uses of City-accepted Port ROWs; and

WHEREAS, Port and Public Works staffs have identified potential areas to pilot the simplified license and permit procedure to further support vibrant, mixed-use developments, which may include the Mission Rock Special Use District ("SUD"), the Pier 70 SUD, and/or the Potrero Power Station SUD, all of which include City-accepted Port ROWs and would benefit from the simplified license and permit procedure; and

WHEREAS, The Public Works Code must be amended to implement the simplified license and permit procedure for Port-Licensed Encroachments on sidewalks within City-accepted Port ROWs; now, therefore be it

RESOLVED, That the Port Commission supports simplifying the duplicative license and permit procedure for Port-Licensed Encroachments on sidewalks within City-accepted Port ROWs, including in the Mission Rock SUD, Pier 70 SUD, and Potrero Power Station SUD, by identifying the Port as the sole licensing and permitting authority for Port-Licensed Encroachments; and be it further

RESOLVED, That the Port Commission recommends the Board of Supervisors and Mayor amend the Public Works Code to identify the Port as the sole licensing and permitting authority for Port-Licensed Encroachments on sidewalks within City-accepted Port ROWs within the Mission Rock SUD, Pier 70 SUD, and the Potrero Power Station SUD; and, be it further

RESOLVED, That the Port will accept responsibilities including design review, permitting, inspecting, and enforcement of such Port-Licensed Encroachments on sidewalks within City-accepted Port ROWs in such areas as may be defined by the Board of Supervisors, and further instructs Port staff to collaborate with and coordinate such responsibilities with the Department of Public Works to avoid conflicts and facilitate vibrant use and activation of City-accepted Port ROWs; and, be it further

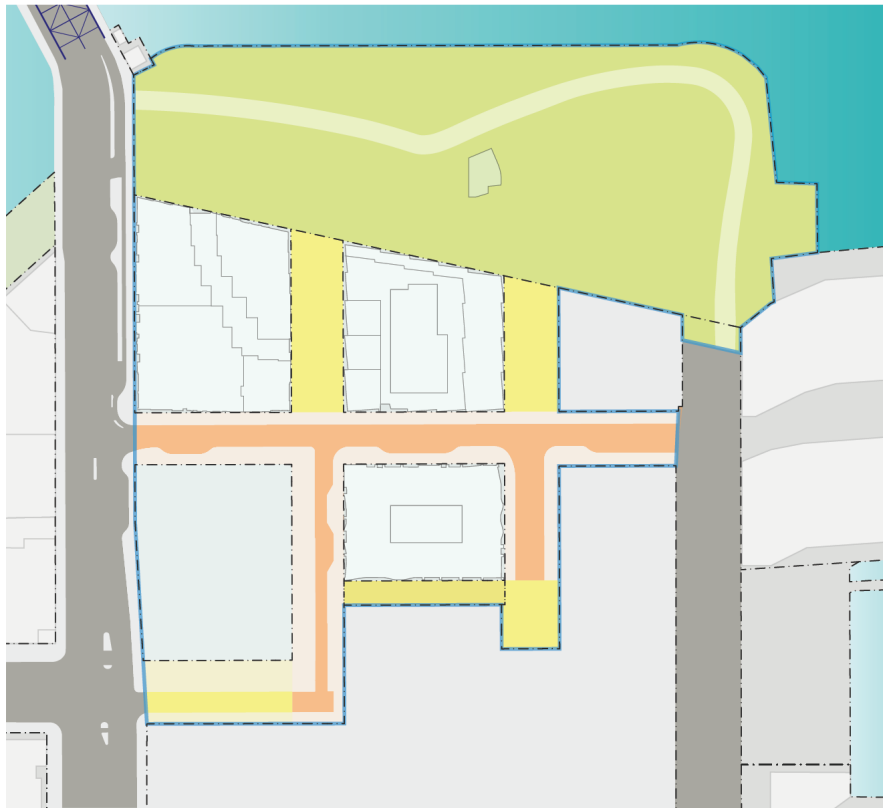
RESOLVED, The Port Commission directs staff to establish guidelines and regulations (the Retail Activation Guidelines) concerning the licensing and/or permitting of retail activations on City-accepted Port ROWs. These Retail Activation Guidelines shall include standards pertinent to urban design and placemaking, accessibility, aesthetics, Port/Public Works coordination, and reference the Mission Rock, Pier 70, and Potrero Power Station design controls; and be it further

RESOLVED, That upon passage of any necessary legislation, and to the extent that the Port does not have adequate licensing and permitting rules and regulations, Port staff may implement and rely on existing Public Works standards

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 11, 2025.

Secretary

EXHIBIT 1. MISSION ROCK SUD AREA

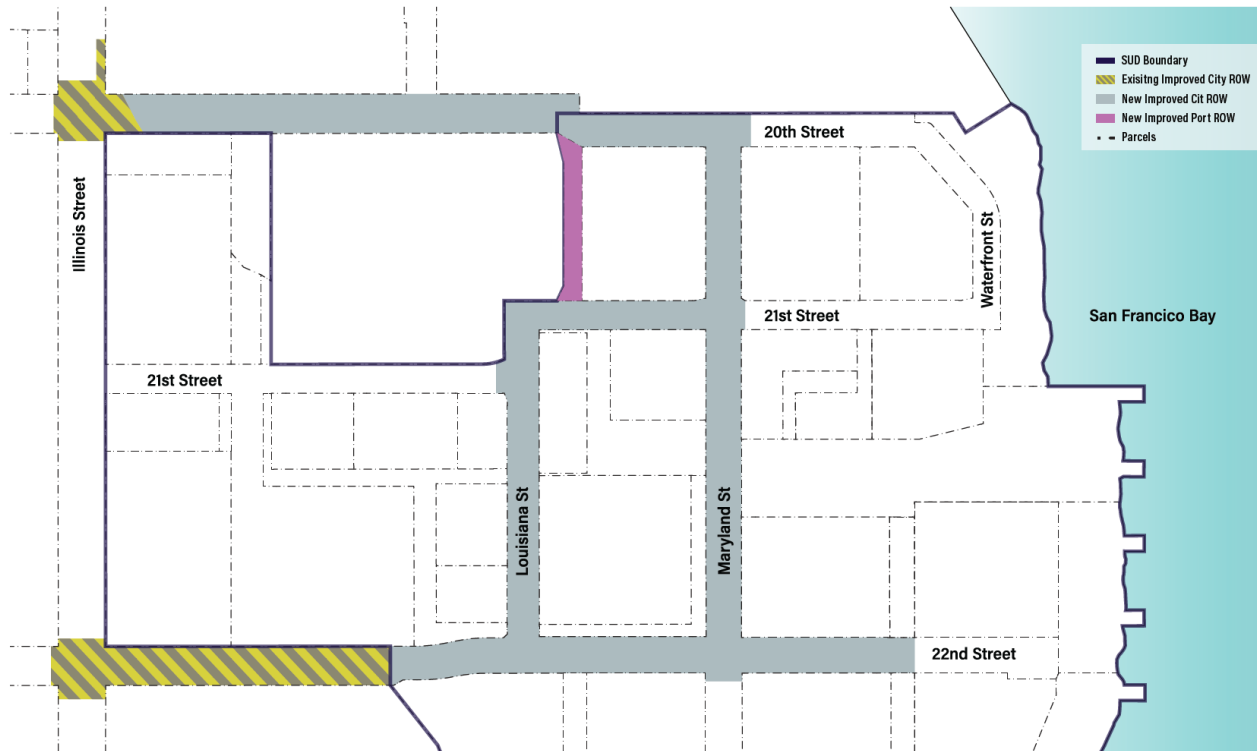


Mission Rock Phase 1 City-Accepted Port Streets.

Legislation would also apply to subsequent phases

Area in orange is proposed to be included in legislation.

EXHIBIT 2. PIER 70 SUD AREA



City-Accepted Port Streets within Pier 70 Phase 1.

Legislation would also apply to subsequent phases

Area in gray is proposed to be included in legislation.

City-Accepted Portion of Port-Owned 23rd Street in the Potrero Power Station



EXHIBIT 4. CREATIVE RETAIL ACTIVATION EXAMPLES



1. Custom seating, table, planter
2. Modular Seating/planters / Parklet*
3. Hexagonal ping-pong-table
4. Serpentine bench*
5. Simple furnishings/stage*

6. Custom planters and furnishings
7. Temporary Art / Sculpture

* Note: Port not seeking authorization to allow paint on sidewalk