

PORT ORDINANCE NO. 4629

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE LEASE AMENDMENT NO. 7 WITH YOSHI'S JAPANESE RESTAURANT, INC. FOR PREMISES LOCATED AT 510 EMBARCADERO WEST, OAKLAND, TO ABATE THE DEFERRED RENT IN FISCAL YEAR 2021 UNDER THE COMMERCIAL REAL ESTATE TEMPORARY RESTAURANT RENT ABATEMENT AND DEFERRAL PROGRAM IN AN AMOUNT TOTALING \$455,416.67.

**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.3, dated November 18, 2021, ("Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, Section 706 of the City of Oakland ("City") Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to make provisions for the needs of commerce, shipping, and navigation of the Port and to promote the development, construction, and operation of all waterfront properties, including piers, wharves, sea walls, docks, and other improvements; and

**WHEREAS**, the proposed action will provide service for members of the public who use the waterfront, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the requested approval will not interfere with the Tidelands Trust; and

**WHEREAS**, in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received; now, therefore

**BE IT ORDAINED** by the Board of Port Commissioners of the City of Oakland as follows:

**Section 1.** The Board hereby finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, which exempts, among other things, the leasing of existing premises involving negligible or no expansion of an existing or former use.

**Section 2.** The Board further finds and determines as follows:

A. Yoshi's Japanese Restaurant, Inc. ("Yoshi's") is a participant in the Commercial Real Estate Temporary Restaurant Rent Abatement and Deferral Program ("Rent Relief Program") approved by the Board; and

B. Despite the benefits offered under the Rent Relief Program, Yoshi's suffered significant revenue loss due to governmental shelter in place orders and other effects of the COVID-19 pandemic; and

C. Yoshi's has requested abatement of certain deferred rent owed under the Rent Relief Program to allow it to return to full operations and financial stability.

**Section 3.** The Board hereby approves and authorizes the Executive Director or his designee to:

A. Execute the proposed Lease Amendment No. 7 ("Agreement") with **Yoshi's Japanese Restaurant, Inc.** to abate the deferred rent from Fiscal Year 2021 under the Rent Relief Program in an amount totaling \$455,416.67, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the Agreement is not fully executed within thirty (30) days after the effective date of the Board's approval, the approval shall be null and void unless extended at the sole and absolute discretion of the Executive Director or his designee.

B. Make any additions, modifications, or corrections as necessary to implement the Agreement, provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

**Section 4.** This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this Ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

**Section 5.** This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, November 18, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story, and President Cluver - 7. Noes: 0.

Daria Edgerly

Secretary of the Board