

AGENDA REPORT

Ordinance: Approval of Amendment No. 3 to the Lease with I Scream Scoops, LLC, for a Third Extended Term of Five (5) Years at a Rental Rate of \$3,462 per month, for the Premises Located at 505 Embarcadero West, Oakland. **(CRE)**

MEETING DATE: 2/22/2018

AMOUNT: \$3,462.00 per month
Revenue

PARTIES INVOLVED: I Scream Scoops, LLC, dba Ben & Jerry's Ice Cream and Frozen Yogurt
Lawrence Maki, Managing Member

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

The subject Agenda Report is a request for approval to amend the existing lease with I Scream Scoops, LLC, also known as Ben & Jerry's, to extend their tenancy for an additional five (5) years for the premises located at 505 Embarcadero West, Oakland, and increase their minimum monthly rental rate for the extended term.

BACKGROUND

The Port entered into a lease with Ben and Jerry's of California, Inc. on June 12, 2002 for the premises located at 505 Embarcadero West, consisting of approximately 1,171 square.feet. A map of the premises is included as an attachment to this report. On November 1, 2003, Ben and Jerry's of California, Inc. assigned their lease to Lawrence Maki, Managing Member of I Scream Scoops, LLC ("Lessee"). The original lease provided for a term of five (5) years and two (2) options to renew, each for a five (5) year period. In anticipation of the March 21, 2018 expiration of the second and final option term, the Lessee and the Port have entered into discussions to amend the lease to include a third extended term, for an additional five (5) years, with a new lease expiration date of March 31, 2023.

ANALYSIS

The proposed five (5) year lease extension will include the following changes to certain key provisions of the existing lease agreement, with all other provisions of the existing lease remaining unchanged:

	Current Lease	Proposed Amended Lease
Lease Extension and Expiration	Current lease expires March 21, 2018.	Amended lease would expire March 31, 2023.
Monthly Minimum Rent	\$2.87 per sq.ft., or \$3,360 per month	\$2.95 per sq.ft., or \$3,462 per month, with 3% annual adjustments thereafter.
Common Area (CAM) Payments to Port	\$1,010 per month	\$1,010 per month with 3% annual adjustments thereafter.
Percentage Rent Rate	12% of gross sales less minimum rent	10% of gross sales less minimum rent

Staff believes the proposed amendment will allow the Port to retain a key tenant, while increasing our minimum rent revenues and avoiding a potential vacancy of this space. Furthermore, the proposed change in the percentage rent rate, from 12% to 10%, is comparable to retail percentage rates for other tenancies within Jack London Square and when combined with the increase in minimum monthly rent represents a fair market value for the premises. Based on the analysis above staff recommends approval of the proposed lease amendment.

BUDGET & STAFFING

The proposed action to provide a third extended term of five (5) years will have no impact on the Port's FY 18 budget as these terms were anticipated and included within the operating budget prepared for FY 18. No staffing impact is anticipated from the proposed action as 505 Embarcadero West is already managed by existing staff.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan:

Goal B: Maintain and Aggressively Grow Core Businesses

- Goal B: Objective 1: Retain existing customers and tenants

Goal D: Improve the Port's Financial Position

- Goal D: Objective 1: Improve cash position and debt service coverage ratio (DSCR).

LIVING WAGE

Living Wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this matter because tenancies outside of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

ENVIRONMENTAL

CEQA Determination: The proposed amendment to lease has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. Approval of the proposed lease amendment with I Scream Scoops, LLC falls within this class of exemptions. No additional environmental review is required to take the action recommended in this Agenda Report.

GENERAL PLAN

The proposed action is an extension of an existing use that was previously determined to conform to the City of Oakland General Plan. This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility. No new conformity determination is necessary.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

1. Approve the proposed amendment to the existing lease with I Scream Scoops, LLC, to provide a third extended term of five years commencing March 22, 2018 and expiring on March 21, 2023, for the premises located at 505 Embarcadero West, Oakland. This is the recommended option.
2. Do not approve the proposed amendment to the existing lease with I Scream Scoops, LLC, to provide a third extended term of five years commencing March 22, 2018 for the premises located at 505 Embarcadero West, Oakland, which will likely result in a vacancy of the premises.
3. Direct staff to negotiate alternative terms for the proposed amendment to the existing lease with I Scream Scoops, LLC, which, depending on the nature of the alternative terms, may prove to be unacceptable to the Lessee.

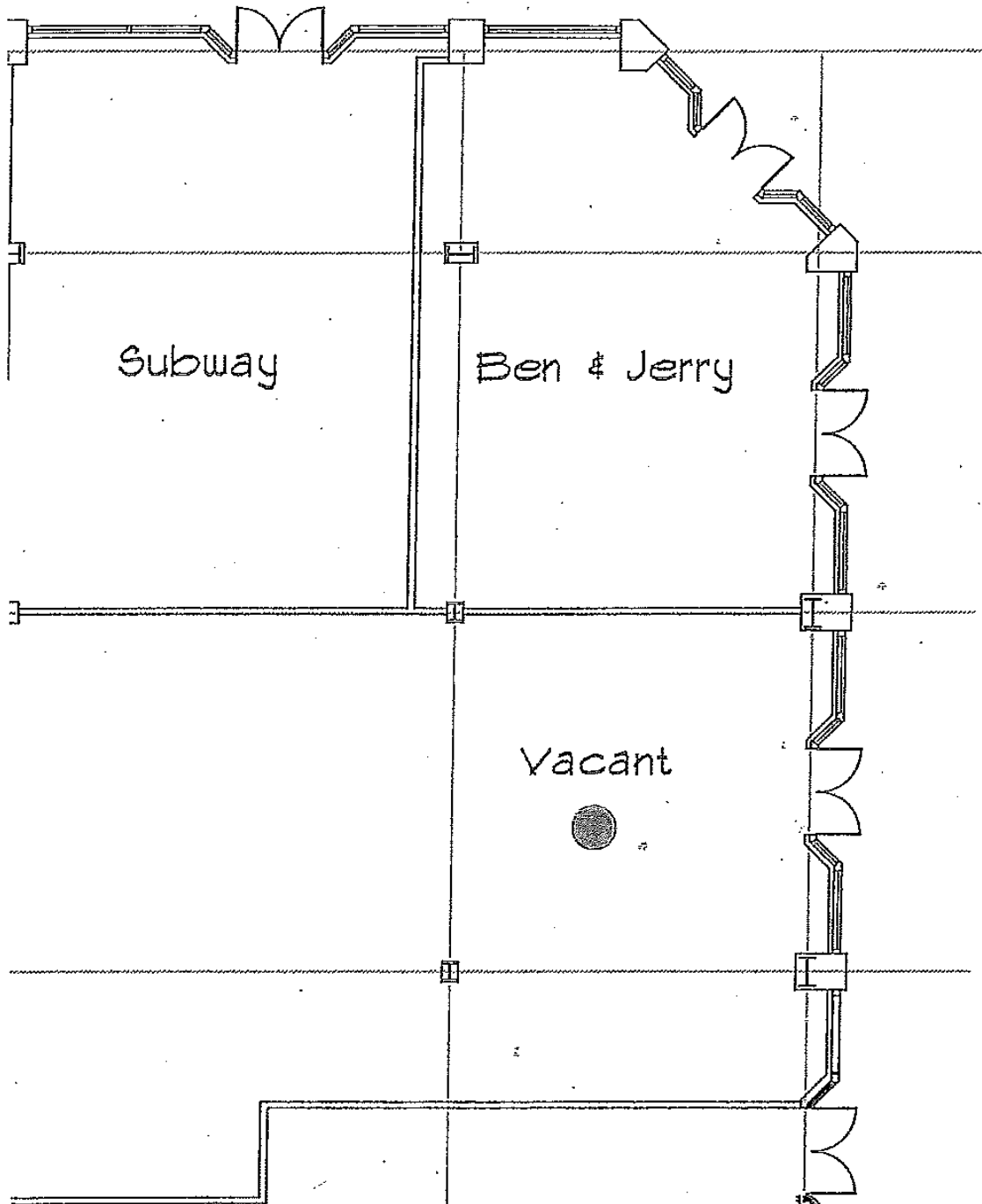
RECOMMENDATION

Staff recommends that the Board approve the proposed Amendment No. 3 to the Lease with I Scream Scoops, LLC, for a third extended term of five (5) Years at a rental rate of \$3,462 per month, for the Premises located at 505 Embarcadero West, Oakland, subject to the other terms and conditions as described within this Agenda Report and authorize the Executive Director to execute all documents as may be appropriate to consummate this transaction, subject to the port attorney's approval as to form and legality. Furthermore, if this lease amendment is not fully executed within thirty (30) days after Board approval, the approval shall be null and void, unless extended at the sole and absolute discretion of the Executive Director or his designee.

Attachment – Site Map

SITE MAP

505 Embarcadero West, Oakland
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SITE MAP

505 Embarcadero West, Oakland
Page 2

