

PORT ORDINANCE NO. 4464

ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE  
DIRECTOR TO EXECUTE AMENDMENT NO. 3 TO THE LEASE  
WITH I SCREAM SCOOPS, LLC FOR A THIRD EXTENDED TERM  
OF FIVE YEARS AT A RENTAL RATE OF \$3,462.00 FOR  
PREMISES LOCATED AT 505 EMBARCADERO WEST, OAKLAND.

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**WHEREAS**, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 2.1, dated February 22, 2018 (the "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 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 State of California (the "Tidelands Trust"), and the private use of Port property pursuant to the Lease amendment will not interfere with the Tidelands Trust; now, therefore

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

**Section 1.** 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.

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

A. I Scream Scoops, LLC ("Lessee") is currently the Lessee to a Lease, with an effective date of June 12, 2002, for the operation of a Ben and Jerry's retail store on approximately 1,171 square feet of Port owned property located at 505 Embarcadero West, Oakland (the "Premises"); and

B. Port staff have negotiated and recommend entering into a third amendment with Lessee for the Premises under the terms described in the Agenda Report, including the following:

1. Term: Approximately five (5) year extension, expiring March 31, 2023.

2. Minimum Monthly Rent: \$2.95 per sq.ft., or \$3,462 per month, with 3% annual adjustments thereafter.
3. Common Area Maintenance (CAM) Payments: \$1,010 per month, with 3% annual adjustments thereafter.
4. Percentage Rent Rate: 10% of gross sales less minimum rent.

C. The Board further finds and determines that the proposed approval is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines 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.

**Section 3.** The Board hereby authorizes the Executive Director or his designee to execute the proposed amendment with **I Scream Scoops, LLC**, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed 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 of his designee.

**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 Board. 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.

The Board of Port Commissioners, Oakland, California, February 22, 2018. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Cluver, Colbruno, Martinez, Yee and President Story - 6. Excused: Commissioner Hamlin - 1. Noes: 0.

Daria Edgerly  
Secretary of the Board

