

PORT ORDINANCE NO. 4596
ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTIVE DIRECTOR TO EXECUTE A LICENSE AND
CONCESSION AGREEMENT WITH MARY ANN SWIFT, DBA
AFTERGUARD SAILING ACADEMY, FOR AN INITIAL
ANNUAL RENT OF \$60,852 FOR PREMISES LOCATED
AT 1285 EMBARCADERO ROAD, OAKLAND.

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 April 8, 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 ("Tidelands Trust"), and the private use of Port property pursuant to the proposed agreement 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 the leasing or licensing of existing structures and involve negligible or no expansion of use beyond that previously existing.

Section 2. The Board further finds and determines that Port staff have negotiated and recommend entering into a License and Concession Agreement ("Agreement") under the following core terms:

- A. Licensee: Mary Ann Swift, dba Afterguard Sailing Academy.
- B. Premises: Approximately 900 square feet ("sq. ft.") of office space, 4,586 sq. ft. of warehouse space, and approximately 6,891 sq. ft. of paved and fenced land located at 1285 Embarcadero Road, Oakland.
- C. Term: Commencing on May 1, 2021, and terminating on April 30, 2024.
- D. Monthly Rent: \$5,071 with 3% annual increases.

E. Security Deposit: Three (3) times' the Monthly Rent.

F. Use: Maritime education for sailboat operation and safety, and related ancillary administrative purposes.

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

A. Execute the Agreement with **Mary Ann Swift, dba Afterguard Sailing Academy**, as further described herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Agreement is not fully executed within sixty (60) 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 such 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, April 8, 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