

PORT ORDINANCE NO. 4612

ORDINANCE (I) APPROVING AMENDMENT NO. 6 TO SPACE/USE PERMIT FOR NON-EXCLUSIVE IN-TERMINAL ADVERTISING CONCESSION WITH CLEAR CHANNEL OUTDOOR DBA CLEAR CHANNEL AIRPORTS ("CLEAR CHANNEL") TO EXTEND THE TERM FOR ONE YEAR THROUGH JUNE 30, 2022, AT EXISTING RENT OF 30% GROSS RECEIPTS, (II) WAIVING THE RESTRICTION IN RESOLUTION NO. 16-144 - RESOLUTION APPROVING A RESTATEMENT, AFFIRMATION AND UPDATE TO THE BOARD'S POLICY FOR AWARDED CONCESSION AND CUSTOMER SERVICE PRIVILEGES AT THE TERMINAL COMPLEX AT OAKLAND INTERNATIONAL AIRPORT, AND (III) AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AMENDMENT NO. 6 AND ANY OTHER NECESSARY AGREEMENTS WITH CLEAR CHANNEL TO EFFECT THE TRANSACTION.

WHEREAS, on June 17, 2008, the Board of Port Commissioners of the City of Oakland ("Board") adopted Ordinance No. 4060 approving a Space/Use Permit ("SUP") with Clear Channel Outdoor dba Clear Channel Airports ("Clear Channel") for a term of ten years, commencing July 1, 2008, and terminating June 30, 2018, with initial rent of the higher of a minimum annual guarantee ("MAG") of \$9.1 Million and 50% of gross receipts; and

WHEREAS, on September 28, 2009, the Board approved Amendment No. 1 to the SUP adjusting the MAG from \$9.1 Million to \$8.6 Million and increasing the percentage of gross receipts from 50% to 60%; and

WHEREAS, on February 23, 2017, the Board approved Amendment No. 2 to the SUP to correct and resolve rental calculation issues identified following the Port of Oakland's ("Port") Office of Audit Services' audit of Clear Channel from January 1, 2012, through December 31, 2014; and

WHEREAS, on June 14, 2018, the Board approved Amendment No. 3 to the SUP to, among other matters, extend on a month-to-month basis the SUP to no later than March 31, 2019, at a new, reduced MAG of \$420,000; and

WHEREAS, on May 9, 2019, the Board approved Amendment No. 4 to the SUP to, among other matters, extend the term through June 30, 2020, at a new, reduced MAG of \$120,000; and

WHEREAS, on July 23, 2020, the Board approved Amendment No. 5 to the SUP to, among other matters, extend the term through June 30, 2021, at a reduced rate of 30% of gross receipts and no MAG; and

WHEREAS, the Board has reviewed and evaluated the Agenda Report for Agenda Item No. 6.1, dated September 16, 2021 (the "Agenda Report") and related agenda materials, has received the expert testimony of Port

staff, and has provided opportunities for and taken public comment; 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 this action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines. Per the CEQA Guidelines Section 15301, renewals, extensions, or amendments to leases or to license and concession agreements, or the execution of leases or license and concession 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, are categorically exempt from CEQA. Therefore, this action is not subject to CEQA and no environmental review is required.

Section 2. 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 3. The Board hereby approves the terms and conditions set forth in the Agenda Report for Amendment No. 6 to the SUP with Clear Channel to extend the term of the current SUP one year through June 30, 2022, at the existing rent of 30% of gross receipts and no MAG, which is expected to generate at least \$100,000 in rental revenue for the one year term extension, as described in the Agenda Report.

Section 4. The Board hereby exempts the proposed extended one-year term from the prohibition in Resolution No. 16-144 that there be no extensions to any concession agreement and confirm that the Board finds it will be in the best interest of the Airport to negotiate the terms and conditions of Amendment No. 6 with Clear Channel.

Section 5. The Board hereby authorizes the Executive Director to execute Amendment No. 6 to the SUP and any other necessary agreements with Clear Channel to effect the transaction, and to make such additions, modifications, or corrections as necessary to implement the Amendment No. 6 or to correct errors, subject to the limitations set forth herein and 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 6. This ordinance is not evidence of and does not create or constitute (a) a contract(s), 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 contract 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 other contracting party, there shall be no valid or effective contract.

Section 7. 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, September 16, 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