

## MEMORANDUM

May 4, 2017

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. Leslie Katz  
Hon. Eleni Kounalakis  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request an exemption from the Port's Retail Leasing Policy and approval of two five-year leases with two existing Pier 40 retail tenants: the Bike Hut Foundation, a California 501(c) (3) Non-Profit Organization (Lease Number L-16019); and Ted Choi, a Sole Proprietorship Doing Business as City Kayak (Lease Number L-16028)

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution

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### **EXECUTIVE SUMMARY**

Port staff is seeking an exemption from the Port's Retail Leasing Policy which generally requires a competitive bid process for retail opportunities and approval of two five-year leases with existing Pier 40 retail tenants: the Bike Hut Foundation, a California 501(c) (3) Non-Profit Organization (Lease Number L-16019); and Ted Choi, a Sole Proprietorship Doing Business as City Kayak (Lease Number L-16028).

### **BACKGROUND**

The former San Francisco Redevelopment Agency (SFRDA) developed South Beach Harbor/ Pier 40 in the early 1980s under a ground lease with the Port and managed it until the dissolution of redevelopment agencies under California Community Redevelopment Law, at which time the Port commenced managing the property. The Successor Agency to the SFRDA, now known as the Office of Community Investment and Infrastructure (OCII), and Port staff are in the process of finalizing a Memorandum of Agreement (MOA) which would terminate the ground lease and formally transfer control back to the Port. While the transition plan is being finalized, the Port administers the Pier 40 leases and conducts property management and oversight on behalf of OCII.

**THIS PRINT COVERS CALENDAR ITEM NO. 10A**

Included in the transfer from OCII are two existing retail tenants at Pier 40: the Bike Hut Foundation, a California 501(c) (3) Non-Profit Organization (“Bike Hut”); and Ted Choi, a Sole Proprietorship Doing Business as City Kayak (“City Kayak”). Both tenants are on outdated under market month-to-month SFRDA agreements.

Port staff has negotiated new leases with these tenants using the Port’s up-to-date standard boilerplate lease for retail tenants at Port Commission-approved market rental rates including a percentage rent component, as well as current requirements for the Port standard insurance types of coverages and requisite amounts.

### **RETAIL LEASING POLICY**

Under the Port Commission Retail Leasing Policy retail leasing opportunities must generally be offered through a competitive public solicitation. In this case, Port staff believes that the benefits of direct negotiations with these two tenants outweigh the policies underlying the competitive bidding requirement and therefore does not recommend a competitive process for these leases at this time. Both of these tenants were long-term tenants of SFRDA, have been cooperative in the transition of South Beach Harbor to Port control and remain in good standing. They have a proven track record of promoting recreation uses and providing positive visitor experiences. These tenants also meet the Port’s Strategic Objectives by retaining Non-Profits and Sole Proprietorship’s and by maintaining a livable and engaging waterfront by providing active recreation. For these reasons, Port staff does not consider these preferred for competitive solicitation opportunities and instead seeks a Port Commission exemption from the Retail Leasing Policy for these tenants. Once these leases expire, Port staff plans to rely on the Retail Leasing Policy to seek a competitive bid for these opportunities or grant a lease extension based on the exceptions outlined in the Retail Leasing Policy.

### **BIKE HUT**

The Bike Hut is a full service bike shop. Established in 2007, the Bike Hut is run by the Bike Hut Foundation, a non-profit 501(c) (3) organization whose mission is to promote cycling and youth training and by providing affordable bike rental, repairs and sales. The Bike Hut also recycles donated bikes and parts to reduce the waste stream. The Bike Hut is a resource for local cyclists and a center for skills training for young adults from low-income communities. Staffed with a shop mentor, mechanics and volunteers, the Bike Hut is a place to rent bikes, learn to build and repair them, and buy parts and accessories. The Bike Hut’s current monthly rent is \$314.00 indexed annually by the Consumer Price Index. The new monthly rent is \$360.00 or an increase of 7% and is index annually by 3%. The Percentage amount is consistent or slightly higher than what other Port retail tenants pay.

### **PROPOSED LEASE TERMS**

Port Real Estate staff and representatives of the Bike Hut have negotiated proposed Lease No. L-16019 providing for the following terms and conditions:

<i>Premises :</i>	Approximately 586 rentable square feet including a free-standing retail structure and adjacent paved land in front of Pier 40 located along The Embarcadero			
<i>Length of Term:</i>	Five (5) years			
<i>Rent:</i>	As determined on an annual basis the higher of (i) 8% of Gross Revenues or (ii) Base Rent as described below.			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	268 318	\$0.75 \$0.50	\$201.00 <u>\$159.00</u> Total: \$360.00
	13-24	268 318	\$0.85 \$0.52	\$227.80 <u>\$165.36</u> Total: \$393.16
	25-36	268 318	\$1.00 \$0.54	\$268.00 <u>\$171.72</u> Total: \$439.72
	37-48	268 318	\$1.03 \$0.56	\$276.04 <u>\$178.08</u> Total: \$454.12
	49-60	268 318	\$1.06 \$0.58	\$284.08 <u>\$184.44</u> Total: \$468.52
<i>Permitted Use:</i>	Full service bike shop, sales, rentals, and repairs.			
<i>Seawall:</i>	The Seawall runs underneath the Pier 40 shed. In the Lease, the Port reserves the right to enter and use the Premises as needed for the purpose of inspecting, repairing, and rebuilding the Seawall and/or to terminate the Lease as needed due to the Seawall Resiliency Project.			
<i>Insurance:</i>	Tenant shall provide insurance coverage acceptable to Port and City Risk Manager.			

<p><i>City Requirements:</i></p>	<p>The Lease includes provisions requiring Tenant to comply with all applicable City laws (including, but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws).</p>
<p><i>Standard Lease Provisions:</i></p>	<p>The Lease contains all current lease provisions on the standard form approved by the City Attorney's Office including provisions regarding: compliance with laws, Port's Right to Terminate, Indemnity and Exculpation and Hazardous Materials.</p>

**CITY KAYAK**

City Kayak supports active maritime recreation by rental of human power watercraft such as kayaks and paddle boards. City Kayak has been located at Pier 40 since 2007. San Francisco residents and visitors can conveniently drop in to enjoy paddling on the San Francisco Bay. Youth groups, corporate team building, and tour groups depend on City Kayak's expertise for outings that involve off the beaten paths and physical activity. City Kayak is an American Canoe Association Outfitter which offers standardized instructions and safety-conscious programs.

City Kayak has also helped fund a local non-profit kayak club, Kayaks Unlimited, by providing liability insurance coverage for 3 years at no cost to the non-profit. City Kayak is an advocate and supporter of Blue Greenway and Bay Area Water Trail, and donates Kayaks to local youth for Bayview Paddle at India Basin.

In addition, City Kayak serves the community by providing equipment and services at little or no cost. City Kayak donates services for the San Francisco Bay Water Trail program, YMCA Open Swim safety kayaks, Coastal Cleanup with Aquarium of the Bay, Green Way paddle, Port of San Francisco waterfront excursion and Youth Days with America True.

City Kayaks' current monthly rent is \$839.00 indexed annually by the Consumer Price Index. The new monthly rent is \$1,021.70 or an increase of 22% indexed annually by 3%. The Percentage amount is consistent with what other Port retail tenants pay.

**PROPOSED LEASE TERMS**

Port Real Estate staff and City Kayak have negotiated proposed Lease Number L-16028 providing for the following terms and conditions:

<i>Premises :</i>	Approximately 1,562 rentable square feet of shed space in Pier 40 and outdoor paved land			
<i>Length of Term:</i>	Five (5) years			
<i>Rent:</i>	As determined on an annual basis, the higher of (i) 7% of Gross Revenues or (ii) Base Rent as described below.			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	1,134 428	\$0.75 \$0.40	\$850.50 <u>\$171.20</u> Total: \$1,021.70
	13-24	1,134 428	\$0.85 \$0.41	\$963.90 <u>\$175.48</u> Total: \$1,139.38
	25-36	1,134 428	\$1.00 \$0.42	\$1,134.00 <u>\$179.76</u> Total: \$1,313.76
	37-48	1,134 428	\$1.03 \$0.43	\$1,168.02 <u>\$184.04</u> Total: \$1,352.06
	49-60	1,134 428	\$1.06 \$0.44	\$1,202.04 <u>\$188.32</u> Total: \$1,390.36
<i>Permitted Use:</i>	Rental of human power watercraft such as kayaks and paddle boards, instruction, and guided tours.			
<i>Seawall:</i>	The Seawall runs underneath the Pier 40 shed. In the Lease, the Port reserves the rights to enter and use the Premises as needed for the purpose of inspecting, repairing, and rebuilding the Seawall and/or to terminate the Lease as needed due to the Seawall Resiliency Project.			
<i>Insurance:</i>	Tenant shall provide insurance coverage acceptable to Port and City Risk Manager.			

<i>City Requirements:</i>	The Lease includes provisions requiring Tenant to comply with all applicable City laws (including, but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws).
<i>Standard Lease Provisions:</i>	The Lease contains all current lease provisions on the standard form approved by the City Attorney's office including provisions regarding: compliance with laws, Port's Right to Terminate, Indemnity and Exculpation and Hazardous Materials.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The permitted uses in the Leases are a continuation of existing and related uses and are therefore not a project under the California Environmental Quality Act ("CEQA").

**STRATEGIC OBJECTIVE**

These leases comply with the goals of the Port's Strategic Plan as follows:

1. *Livability: both tenants meet the Port's Strategic Objective of livability by retaining Non-Profits and Sole Proprietorships and by maintaining livable waterfront by providing active recreation.*
2. *Engagement: both tenants meet the Port's Strategic Objective of engagement by allowing access to the bay and the bay trail and waterfront and the Port's blue greenway.*

**RECOMMENDATION**

Port staff recommends that the Port Commission exempt these two leases from the Port's Retail Leasing Policy and approve: proposed Lease Number L-16019 with the Bike Hut Foundation and Lease Number L-16028 with City Kayak on the terms and conditions described above.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager

Prepared for: Peter Dailey Deputy Director, Maritime

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 17-20**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port has managed South Beach Harbor/ Pier 40 since the dissolution of the San Francisco Redevelopment Agency and other redevelopment agencies under California Community Redevelopment Law; and
- WHEREAS, The Bike Hut Foundation, a California 501(c) (3) Non-Profit Organization (the “Bike Hut”) has been a tenant at South Beach Harbor/Pier 40 in the City and County of San Francisco since 2007 and is a tenant in good standing; and
- WHEREAS, Under the Port Commission’s Retail Leasing Policy and San Francisco Administrative Code, retail leasing opportunities must generally be offered through a competitive public solicitation. In this case, Port staff believes that the benefits of direct negotiations with this tenant outweigh the policies underlying the competitive bidding requirement and therefore does not recommend a competitive process for this lease at this time, and
- WHEREAS, Port Staff has negotiated a new five (5) retail lease for approximately 586 rentable square feet with the Bike Hut, the terms of which are described in the Memorandum to the Port Commission dated May 4, 2017 (the “Lease”); and
- WHEREAS, This use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act; now, therefore be it
- RESOLVED, The Port Commission exempts the Lease from competitive bidding requirements of the Port Retail Lease Policy because the benefits of direct negotiations outweigh the policies underlying the competitive bidding requirement, the Bike Hut has a proven track of providing positive visitor experiences, the Bike Hut meets the Port’s Strategic Objectives by retaining Non-Profits and by maintaining a livable and engaging waterfront by providing active recreation, and it is impractical and infeasible to bid this opportunity because it takes on average twelve to eighteen months to complete the public solicitation

process and there is no certainty of outcome or guarantee that the new rent will exceed the existing rent; and be it further

RESOLVED, The Port Commission hereby approves the Lease and authorizes the Executive Director or her designee to execute the Lease; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2017.***

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***Secretary***



**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 17-21**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port has managed South Beach Harbor/ Pier 40 since the dissolution of the San Francisco Redevelopment Agency and other redevelopment agencies under California Community Redevelopment Law; and
- WHEREAS, Ted Choi, a Sole Proprietorship Doing Business as City Kayak has been a tenant at South Beach Harbor/Pier 40 in the City and County of San Francisco since 2007 and is a tenant in good standing; and
- WHEREAS, Under the Port Commission’s Retail Leasing Policy and San Francisco Administrative Code, retail leasing opportunities must generally be offered through a competitive public solicitation. In this case, Port staff believes that the benefits of direct negotiations with this tenant outweigh the policies underlying the competitive bidding requirement and therefore does not recommend a competitive process for this lease at this time, and
- WHEREAS, Port Staff has negotiated a new five (5) retail lease for approximately 1,562 rentable square feet with City Kayak, the terms of which are described in the Memorandum to the Port Commission dated May 4, 2017 (the “Lease”); and
- WHEREAS, This use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act; now, therefore be it
- RESOLVED The Port Commission exempts the Lease from competitive bidding requirements of the Port Retail Lease Policy because the benefits of direct negotiations outweigh the policies underlying the competitive bidding requirement, the City Kayak has a proven track of providing positive visitor experiences and promoting a Trust Use, City Kayak meets the Port’s Strategic Objectives by retaining Sole Proprietorships and by maintaining a livable and engaging waterfront by providing active recreation, and it is impractical and infeasible to bid this opportunity because it takes on average twelve to eighteen months to complete the public solicitation process and there is no

certainty of outcome or guarantee that the new rent will exceed the existing rent; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2017.***

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***Secretary***