

PORT ORDINANCE NO. 4789
ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE A THIRD AMENDMENT TO THE LEASE
WITH SHIPPERS TRANSPORT EXPRESS, INC. TO MODIFY
PREMISES AND COMPENSATION DUE TO CERTAIN DEVELOPMENT
ACTIVITIES; EXECUTIVE A SECOND AMENDMENT TO THE
TEMPORARY LICENSE AGREEMENT WITH ALAMEDA COUNTY
TRANSPORTATION COMMISSION FOR ACCESS TO PERFORM
DEVELOPMENT ACTIVITIES, INCLUDING FOR THE 7TH STREET
GRADE SEPARATION EAST PROJECT, TO EXTEND THE TERM
THROUGH DECEMBER 31, 2028; AND FINDING THAT THE
PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 6.1, dated April 24, 2025, (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 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 important services for customers of the Port, and is consistent with the Port's duty to use and manage Port property in trust for the people of the State of California (the "Tidelands Trust"), and the private use of Port property in the form of a lease will not interfere with the Tidelands Trust; and

WHEREAS, the Port has an existing lease ("Lease") with Shippers Transport Express, Inc. ("STE" or "Lessee"), as amended twice, which expires in June 2032, for operation of a containerized cargo staging yard on approximately 27 acres of the Seaport Logistics Complex, with a current annual lease revenue of approximately \$4.5 million; and

WHEREAS, the Lease provides the Port with a unilateral right to recapture up to 10 acres of land for development (with compensation adjustments), including development for the construction by the Alameda County Transportation Agency ("Alameda CTC") of the 7th Street Grade Separation East Project ("7SGSE Project"), and Alameda CTC requires additional area to accommodate the 7SGSE Project; and

WHEREAS, Alameda CTC has a Temporary License Agreement ("TLA") with the Port to use the recaptured areas for construction of the 7SGSE Project through December 31, 2026, and the Port and Alameda CTC wish to amend that TLA to include additional recaptured acreage and extend the term through December 31, 2028; and

WHEREAS, the Port and STE have agreed that it is to their mutual benefit to amend certain provisions of the Lease, and the Port and Alameda CTC have agreed that it is in their mutual benefit to amend and extend their TLA; 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 action is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines because the proposed action consists of activities that involve negligible or no expansion of an existing use.

Section 2. The Board hereby approves and authorizes the Executive Director or her designee to:

A. Execute the proposed Third Amendment to the Lease with STE for the Premises, with an effective date of May 1, 2025, to temporarily recapture an additional 0.26 acres through December 2028, with compensation adjustments resulting in a revenue loss of approximately \$7,700 in FY 2025 and \$175,300 in FY 2026 through FY 2029, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Third Amendment to the Lease is not fully executed within thirty (30) 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 her designee.

B. Execute the proposed Second Amendment to the TLA with Alameda CTC to update the description and depiction of the premises to reflect the additional recaptured area and extend the term through December 31, 2028, as further described in the Agenda Report, subject to approval as to form and legality by the Port Attorney. Furthermore, if the proposed Second Amendment to the TLA is not fully executed within thirty (30) 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 her designee.

C. Make any additions, modifications, or corrections as necessary to implement the Amendments, 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 3. 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 4. 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 24, 2025. Passed to print for one day by the following vote: Ayes: Commissioners Cluver, Dominguez Walton, Lee, Leslie, Martinez, Myres and President Colbruno - 7. Noes: 0.

Daria Edgerly,

Secretary of the Board