

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

12/14/17
ITEM #: 2.1
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**ORDINANCE APPROVING AND AUTHORIZING THE EXECUTIVE
DIRECTOR ENTER INTO A FIRST AMENDMENT TO THE 1999 GRANT
OF EASEMENT AGREEMENT WITH THE BAY AREA RAPID TRANSIT
DISTRICT BY BERTH 30 TO ALLOW FOR THE INSTALLATION,
MAINTENANCE, AND OPERATION OF AN EMERGENCY GENERATOR.**

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 December 14, 2017 (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; 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. In 1999, the Port granted to the San Francisco Bay Area Rapid Transit District ("BART") an easement for, among other things, a parcel of land adjacent to a BART Vent Structure located within the TraPac Terminal premises by Berth 30. Such easement parcel is commonly referred to as "Parcel D" and was limited only for access purposes and no other uses.

B. As part of its on-going operation, maintenance, and improvement of BART's transportation facilities, BART wishes to amend the permitted uses of Parcel D to allow BART to construct, install, operate, maintain, repair, and replace on Parcel D an emergency generator and other improvements directly related to its rapid transit facilities.

C. In 2012, the Port granted to BART an easement over approximately 4,630 square feet of land (commonly referred to as "Parcel D-2") adjacent to Parcel D for the same purpose, but BART's proposed emergency generator will exceed the boundaries of Parcel D-2, and BART foresees the need for other uses of Parcel D directly related to its rapid transit facilities; and

D. The Port and BART have amended the permitted uses provisions of the easement for Parcel D to include the following terms:

- i. Permitted: BART will be allowed to use Parcel D for the installation, operation, and maintenance of an emergency generator for the Vent Structure and other improvements directly related to BART's rapid transit facilities;
- ii. Other Conditions: Before beginning work on any improvements on Parcel D (including the emergency generator), BART must submit detailed plans and specifications of the proposed improvements to the Port and obtain the Port's approval of such plans and specifications, which approval will not be unreasonably withheld, delayed or conditioned. Additionally, BART must obtain a Port development permit and all other governmental approvals to install such improvements.

E. The Board further finds and determines that the proposed amendment to the easement for Parcel D is categorically exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15301, Existing Facilities, which exempts renewals, extensions or amendments to 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 existing. The proposed amendment to the easement for Parcel D involves minor modification and maintenance to an existing facility that involves no expansion of use, and BART, as the lead agency for its Emergency Generator project, filed its notice of exemption on November 9, 2017. Any other future improvements within Parcel D will be subject to further environmental review, as needed.

F. 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 water front properties including piers, wharves, sea walls, docks, and other improvements.

G. The proposed amendment to the easement for Parcel D will facilitate BART's construction and completion of valuable improvements to BART's rapid transit facilities for the benefit of the public; and

H. The proposed amendment 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 proposed use of Port property pursuant to the proposed amendment will not interfere with the Tidelands Trust.

Section 3. The Board hereby authorizes the Executive Director or his designee to execute the proposed amendment to the easement for Parcel D with BART and to make minor amendments thereto consistent with the intent of the Board as described in the Agenda Report and this ordinance, 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 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.

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President.

Attest: _____
Secretary.

Approved as to form and legality:

Port Attorney