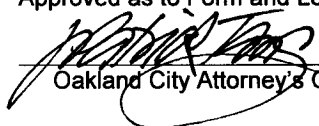


OAKLAND
07 DEC 17 PM 3:54

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 80939 C.M.S.

INTRODUCED BY COUNCILMEMBER

RESOLUTION RESCINDING RESOLUTION NO. 23515 C.M.S. APPROVED AUGUST 30, 1949, WHICH GRANTED A REVOCABLE PERMIT TO SOUTHERN PACIFIC COMPANY TO MAINTAIN AND OPERATE AN EXISTING SPUR TRACK UPON AND ACROSS 23RD AVENUE, 29TH AVENUE, DERBY STREET, LANCASTER STREET AND FORD STREET AND UPON AND ALONG GLASCOCK STREET BETWEEN 29TH AVENUE AND LANCASTER STREET IN THE CITY OF OAKLAND ("FRUITVALE TRACK") AND DIRECTING THE CITY ADMINISTRATOR TO FILE AN ACTION FOR "ADVERSE ABANDONMENT" OF THE FRUITVALE TRACK WITH THE DEPARTMENT OF TRANSPORTATION SURFACE TRANSPORTATION BOARD

WHEREAS, the City Council of the of the City of Oakland approved Resolution No. 23515 C.M.S. on August 30, 1949, which granted a revocable permit to Southern Pacific Company to maintain and operate an existing spur track upon and across 23rd Avenue, 29th Avenue, Derby Street, Lancaster Street and Ford Street and upon and along Glascock Street between 29th Avenue and Lancaster Street in the City of Oakland ("Fruitvale Track") as illustrated in Attachment A to this Resolution; and

WHEREAS, Resolution No. 23515 C.M.S was approved pursuant to Oakland City Charter Article IX, *Powers Of The City And Of The City Council*, Section 51, Subdivision 55, *Spur Tracks*, which authorized the City Council, as follows:

To permit the laying down of spur or side tracks and running cars thereon, for the purpose of connecting warehouses, manufactories or other business industries and enterprises with any line of railroad or railroads that may be built along the water front or with any other line or lines of railroad which do now or may hereafter enter the City, subject to such regulations and conditions as may be prescribed from time to time by the Council, such tracks to be used for transportation of freight only, and not to be used as a main line or a part thereof; and also for the purpose of excavating and filling in a street or portion of a street or the adjoining land, during such limited time as may be necessary for such purpose and no longer.

Such tracks may be laid level with the street and must be operated under such restrictions as not to interfere with the use of the streets by the public. All permits granted under the provisions of this subdivision shall be revocable at the pleasure of the Council.

WHEREAS, the revocable permit granted under Resolution No. 23515 C.M.S. was not a railroad franchise as the granting of a railroad franchise would have required an action by the City Council approving an ordinance according to provisions of Oakland City Charter Article XX, *Franchises*, Sections 137 through 151; and

WHEREAS, at the time Resolution No. 23515 C.M.S was approved, the area in which the Fruitvale Track is located was wholly or partly within the jurisdiction of the Port of Oakland; and

WHEREAS, the Board of the Port of Oakland approved Port Resolution No. B518 on August 22, 1949, which granted a revocable permit to Southern Pacific Company to maintain and operate an existing spur track over the same area authorized by the City resolution for the Fruitvale Track as illustrated in Attachment A to this Resolution; and

WHEREAS, City staff has determined that the permit area described in Resolution No. 23515 C.M.S and Port Resolution B518 is now entirely within the jurisdiction of the City of Oakland and no longer within the jurisdiction of Port of Oakland; and

WHEREAS, Union Pacific Railroad began operating trains on the Fruitvale Track at some point after August 30, 1949; and

WHEREAS, Union Pacific Railroad currently and for many years has served businesses located along the Estuary on Embarcadero Avenue in the area of the Fruitvale Track, by running trains on another track along Interstate 880 ("I880 Track"); and

WHEREAS, Union Pacific Railroad has not regularly used the Fruitvale Track for approximately two years; and

WHEREAS, The area in and around the Fruitvale Track has become less industrial and increasingly residential with housing developments on Glascock Street, Lancaster Street, Ford Street over the past five years; and

WHEREAS, Union Pacific Railroad wishes to re-activate the Fruitvale Track to serve the same businesses it is currently serving on the I880 Track; and

WHEREAS, re-activation of the Fruitvale track will be detrimental to the public interest because of impacts related to traffic and pedestrian safety, noise,

air quality, and police and fire service access, and access to the City of Alameda; now, therefore, be it

RESOLVED: Based on information contained in the City Administrator's report accompanying this Resolution, the City Council finds and determines that re-activation of the Fruitvale Track shall be detrimental to the public interest because it would impact traffic and pedestrian safety, noise, air quality, and police and fire service access, and access to the City of Alameda; and be it

FURTHER RESOLVED: That the City Council hereby rescinds Resolution No. 23515 C.M.S., approved on August 30, 1949, which granted a revocable permit to Southern Pacific Company to maintain and operate an existing spur track upon and across 23rd Avenue, 29th Avenue, Derby Street, Lancaster Street and Ford Street and upon and along Glascock Street between 29th Avenue and Lancaster Street in the City of Oakland ("Fruitvale Track"), as illustrated in Attachment A to this Resolution; and be it

FURTHER RESOLVED: Based on information contained in the City Administrator's report accompanying this Resolution, the City Council finds and determines that the Fruitvale track, as illustrated in Attachment A, is currently entirely within the jurisdiction of the City of Oakland and no longer in the jurisdiction of the Port of Oakland; and be it

FURTHER RESOLVED: That this permit rescission for the Fruitvale Track is deemed complete and final and no further action by the Port of Oakland Board of Commissioners is required; and be it

FURTHER RESOLVED: That the City Administrator is hereby directed to file an action for adverse abandonment of the Fruitvale Track with the federal Department of Transportation Surface Transportation Board and/or other federal or state agencies as necessary to permanently prohibit use of the Fruitvale Track.

IN COUNCIL, OAKLAND, CALIFORNIA, **DEC 4 2007**

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,
 CHANG, AND PRESIDENT DE LA FUENTE - 7

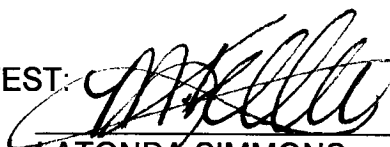
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brunner - 1

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California