

City of Philadelphia



(Bill No. 100777)

AN ORDINANCE

Authorizing the Commissioner of Public Property to accept from CSX Transportation, Inc. an easement for an at-grade crossing on Race Street between 23rd Street and the Schuylkill River, an easement for an at-grade crossing on Locust Street between 25th Street and the Schuylkill River and for an aerial easement in the vicinity of Spruce and 26th Streets, all under certain terms and conditions.

WHEREAS, The Pennsylvania Public Utility Commission (“PUC”) approved an at-grade crossing on Race Street over CSX Transportation, Inc. (“CSX”) tracks near the Schuylkill River Waterfront Trail, an at-grade crossing on Locust Street over CSX tracks near the Schuylkill River Waterfront Trail, and an aerial easement over CSX tracks in the vicinity of Spruce and 26th Streets near the Schuylkill River Waterfront Trail (collectively, “Trail Access Routes”); and

WHEREAS, The City and CSX have been involved in federal litigation in the case of *CSX Transportation, Inc. v. City of Philadelphia*, No. 04-CV-05023 (E.D. Pa.), that has resulted in the Court issuing a stipulated order which permitted at-grade crossings at Race and Locust Streets and an aerial crossing at Spruce Street; and

WHEREAS, The City has maintained in *CSX Transportation, Inc. v. City of Philadelphia* that its existing interest in the bed of Race and Locust Streets, together with the federal court order in *CSX Transportation, Inc. v. City of Philadelphia* and the PUC approvals, are sufficient, without additional easements or other land use rights, to construct and maintain the Trail Access Routes; and

WHEREAS, CSX has maintained in *CSX Transportation, Inc. v. City of Philadelphia* that the City cannot build crossings over CSX tracks for public access to the Schuylkill River Waterfront Trail without an express grant of land use rights from CSX for such crossings; and

WHEREAS, Neither the City or CSX has agreed to change its legal position; and

WHEREAS, The City nevertheless wishes to accommodate CSX for purposes of moving forward with construction of the Trail Access Routes amicably, and therefore the City will accept express grants of rights from CSX to construct the Trail Access Routes; and

WHEREAS, The City nevertheless maintains that it may construct the Trail Access Routes without any such grant of rights from CSX; now, therefore

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THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property is hereby authorized to accept from CSX Transportation, Inc. or its subsidiary (collectively, "CSX") an easement or any other grant of rights from CSX to construct an at-grade crossing at the intersection of Race Street and CSX's railroad tracks between 23rd Street and the Schuylkill River.

SECTION 2. The Commissioner of Public Property is hereby authorized to accept from CSX an easement or any other grant of rights from CSX to construct an at-grade crossing at the intersection of Locust Street and CSX's railroad tracks between 25th Street and the Schuylkill River.

SECTION 3. The Commissioner of Public Property is hereby authorized to accept an aerial easement from CSX an easement or any other grant of rights from CSX to construct a pedestrian bridge crossing CSX's railroad tracks in the vicinity of Spruce and 26th Streets.

SECTION 4. The City Solicitor is hereby authorized to review and to approve any documents necessary to effectuate the purpose of this Ordinance, which documents shall contain such terms and conditions as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 16, 2010. The Bill was Signed by the Mayor on December 21, 2010.



Michael A. Decker
Chief Clerk of the City Council