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OAKLAND
Introduced By
2009 JUL 16 AM 8:55

Councilmember

Approved For Form And Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 82193 C.M.S.

**RESOLUTION SUMMARILY AND CONDITIONALLY VACATING EXISTING
PUBLIC SERVICE EASEMENTS WITHOUT COST TO THE HOUSING
AUTHORITY OF THE CITY OF OAKLAND FOR THE COLISEUM GARDENS
HOPE 6 AFFORDABLE HOUSING PROJECT LOCATED AT 801 69th AVENUE**

WHEREAS, the Housing Authority of the City of Oakland (Permittee), a California eleemosynary corporation and owner of seven (7) vacant lots identified as numbers 1 through 5, inclusive, and Parcels B and C on the final subdivision map no. TR7488, approved by Resolution No. 78666 C.M.S. of the Council of the City of Oakland on October 4, 2004, and identified by the Alameda County Assessor as APN 041-4212-002-00 through 041-4212-008-00, inclusive, and identified by the City of Oakland as Coliseum Gardens Hope 6 project and more particularly described on said map in *Exhibit A* attached hereto, has made an application (PPE 09061) to the City Engineer of the City of Oakland to vacate summarily existing public service easements of various dimensional widths and lengths that traverse said properties at various locations to facilitate the construction new public infrastructure for a new affordable housing project; and

WHEREAS, said easements were originally dedicated by various entities and accepted by the City of Oakland through various grand deeds, which were recorded on various dates by the Alameda County Recorder and which are more particularly delineated and identified in *Exhibit B* attached hereto; and

WHEREAS, said easements were dedicated originally for the purposes of future construction of sanitary sewer and storm water drainage mains across said properties; and

WHEREAS, pursuant to design proposals submitted by the Permittee for new infrastructure improvements to serve said new project, the City Engineer of the City of Oakland has determined that said existing easements have not been used for the purposes for which they were dedicated since before said Resolution approving the subdivision map was approved and will not be needed in the future; and

WHEREAS, pursuant to the California Streets and Highways Code section 8333, the legislative body may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for not less than five (5) consecutive years immediately preceding the proposed vacation; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of

Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32: infill projects) and Section 15301 (minor alteration to existing structure) of the California Code of Regulations this project is categorically exempted from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the City Council hereby finds and determines that the proposed summary vacation of said public service easement does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That said vacations, as conditioned herein, of said public service easements, as delineated and identified in *Exhibit B*, to the Housing Authority of the City of Oakland are hereby granted; and be it

FURTHER RESOLVED: That said vacation is hereby conditioned by the following special requirements:

1. the Permittee shall be responsible for properly abandoning, with required permits, existing sanitary sewer improvements within said easement and for properly constructing, with required permits, all sanitary sewer improvements within said Lot 12 and the Drury Road public right-of-way as necessary to serve the proposed new residence; and
2. the Permittee shall be responsible for removing, replacing, and relocating, with required permits, all existing public utilities as necessary to facilitate the installation of said sanitary sewer improvements for the proposed new residence; and
3. the Permittee agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the vacation of said public service easement; regardless of responsibility for negligence; and
4. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions within said public service easement; and that the Permittee agrees that he will use the vacated area at his own risk, and is responsible for his activities and the activities of with all other permittees or workmen operating within the vacated area and for his own safety and the safety of any of his personnel; and
5. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the vacated area, and hereby waives and fully releases and forever discharges the City of Oakland and its officials, officers, employees, representatives, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the vacated area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and

Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

6. the Permittee further acknowledges that he understands and agrees that he hereby expressly waives all rights and benefits which he now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
7. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, he will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his decision to request said vacation, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
8. the hereinabove conditions shall be binding upon the Permittee and his successors, heirs, and assigns, and upon the successive owners of said Lot 12; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 21 2009, 2009

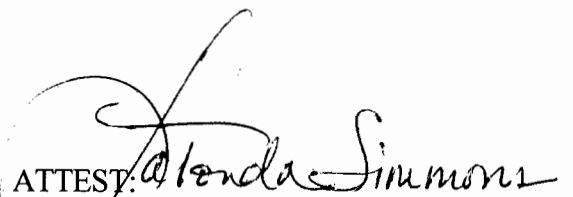
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 

LATONDA SIMMONS

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