

**REVISED**

As revised June 6, 2013

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
Introduced by

2013 JUN -6 PM 3:25

Councilmember

Approved as to Form and Legality

*[Signature]*  
Office of the City Attorney

# OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

**AN ORDINANCE VACATING WITHOUT COST TO THE ABUTTING PROPERTY OWNER HORIZON SERVICES A PORTION OF THE PUBLIC RIGHT-OF-WAY OF APGAR STREET FROM ITS INTERSECTION AT TELEGRAPH AVENUE TO ITS TERMINATION AT THE MACARTHUR TRANSIT VILLAGE PROJECT BOUNDARY**

**WHEREAS**, pursuant to California Streets and Highways Code Section 8320 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, In Oakland, California, on June 18, 2013 , beginning at 6:30 p.m. local time to adopt findings for a proposed ordinance vacating a portion of the improved public right-of-way of Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern property boundary of the MacArthur Transit Village project without cost to one of the two abutting property owners, Horizon Services; and

**WHEREAS**, said meeting also set a hearing beginning at 6:30 p.m. local time in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 18, 2013, to receive supporting evidence and public testimony on said ordinance vacating said portion of Apgar Street; and

**WHEREAS**, the owners of the two parcels which abut said portion of Apgar Street acquired title individually for valuable consideration through the following Instruments:

PROPERTY ADDRESS	ASSESSOR PARCEL No.	PROPERTY OWNER	GRANT DEED
3845 Telegraph Avenue	012-0967-002-00	Horizon Services	recorded 09-28-1992 series no. 1992-313728
516 Apgar Street	012-0968-055-03	Bay Area Rapid Transit District	Subdivision Map 8047

as recorded by the Alameda County Clerk-Recorder, and shown in **Exhibit A** attached hereto; and

**WHEREAS**, pursuant to California Civil Code section 831, an owner of land bounded by a road or street is presumed to own to the center of the way; and

**WHEREAS**, the San Francisco Bay Area Rapid Transit District (BART) established pursuant to California Public Utilities Code section 28500 et seq., who is one of the two owners of real property abutting said portion of Apgar Street proposed for vacation, voluntarily supports the redesign and partial vacation of the future Horizon Services parcel; and

**WHEREAS**, Horizon Services, a California corporation (C0776783), who is one of the two owners of real property abutting said portion of Apgar Street proposed for vacation, has voluntarily agreed to exercise its presumed right and accept without cost its proportional segment of the portion of Apgar Street proposed for vacation and also accept without cost said proportional segment of the portion of Apgar Street which BART supports; and

**WHEREAS**, pursuant to the California Streets and Highways Code, California Government Code, and California Public Resources Code, the Council of the City of Oakland has previously made the following statutory determinations by Resolution:

- the Council of the City of Oakland may adopt terms of performance by an abutting property owner that condition the vacation; and
- that the proposed vacation conforms with the City of Oakland's adopted General Plan; and
- that the statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed; and
- that said property owners of the parcel abutting Apgar Street own the underlying fee simple interest in the portion of the public right-of-way proposed to be vacated; and
- the City Council approved a resolution (83516) on July 26, 2011, for the division of real property, dedications and vacations of public right-of-way and easements, and construction of publicly and privately maintained infrastructure comprising the Final Map for Tract No. 8047; and
- the proposed vacation does not require reservation of public service easement for emergency vehicle access; and
- the proposed vacation will reserve a public service easement for public utilities; and

- the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- the proposed vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety; and
- the proposed vacation will benefit the public and the citizens of Oakland fiscally by decreasing the cost of police services for nuisance and criminal activities and increasing the revenue derived from the general levy of property taxes; and

**WHEREAS**, the extent of the portion of Apgar Street proposed for vacation is shown in a schematic attached hereto as **Exhibit B** and is delineated in the metes and bounds attached hereto as shown in **Exhibit C**; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; and

**WHEREAS**, the City Planning Commission certified the MacArthur Transit Village EIR (ER 06004) on June 4, 2008, and on July 15, 2008, pursuant to Ordinance No. 12883 C.M.S., the City Council independently confirmed and adopted as its own findings and determinations (i) the certification of the FEIR and adoption of the CEQA-related Findings made and adopted by the Planning Commission on June 4, 2008, and (ii) the Conditions of Approval and Mitigation Monitoring and Reporting Program adopted by the Planning Commission on June 4, 2008, as modified in the July 1, 2008 City Council Supplemental Agenda Report; and

**WHEREAS**, the City Planning Commission adopted an addendum to said EIR determining that no further environmental review was required on March 16, 2011, and on May 17, 2011, pursuant to Resolution No. 83292 C.M.S., the City Council affirmed the Planning Commission's CEQA determination that no further environmental review was required; and

**WHEREAS**, the City of Oakland has reviewed and considered documentation relevant to the proposed subdivision and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and the requirements of CEQA and the CEQA Guidelines have been satisfied; now, therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The vacation of a portion of the public right-of-way of Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern property boundary of the MacArthur Transit Village project, as delineated in the attached Exhibit C, without cost to the abutting property owner, Horizon Services, complies with CEQA and is hereby ordered.

**Section 2.** This order of vacation does reserve a public service easement across the vacated right-of-way.

**Section 3.** Access to the vacated right-of-way by the general public may be controlled or prohibited by said abutting property owner, subject to the final inspection approvals by the City Engineer and Fire Chief of the City of Oakland of infrastructure permits for the reconstruction of the narrowed portion of the Apgar Street right-of-way by the developer of the MacArthur Transit Village project, MacArthur Transit Community Partners LLC (MTCP), a California limited liability company (200419810042).

**Section 4.** Pursuant to California Streets and Highways Code section 8336, this order of vacation shall not be complete unless and until this Ordinance has been filed for recording with the Alameda County Clerk-Recorder.

**Section 5.** Construction of Apgar Lane shall be completed by the agent, MTCP, of the abutting property owner, BART, without cost to the City of Oakland with infrastructure permits issued by the City Engineer and within three (3) years of the date of approval of this order of vacation.

**Section 6.** The conditions herein shall equally bind the abutting property owners, BART and Horizon Services, and the agents of BART, MTCP, and their representatives, heirs, beneficiaries, successors in interest, and assigns and the successive owners of said abutting properties.

**Section 7.** The developer of the MacArthur Transit Village project, MTCP, as the agent of the abutting property owner, BART, promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claims, demands, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the said vacation of a portion of the public right-of-way of Apgar Street and that the hereinabove condition shall be binding upon said agent and its beneficiaries, heirs, assigns, and successors in interest.

**Section 8.** The abutting property owner, Horizon Services, acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the public right-of-way area; and that by accepting this vacation, agrees that it will use the area in the future at its own risk.

Section 9. The abutting property owner, Horizon Services, acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the public right-of-way area and hereby waives and fully releases and forever discharges the City of Oakland and its officials, officers, employees, agents, representatives 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 be connected with the physical condition, or required remediation of the public right-of-way 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 1251 et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1400 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2692), 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 Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5 et seq.).

Section 10. The abutting property owner, Horizon Services, further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it 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.

Section 11. The abutting property owner, Horizon Services, recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to accept this vacation, regardless of whether Horizon Service's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Section 12. Horizon Services and MTCP shall enter into an Easement and Maintenance Agreement, to which the City of Oakland will be an intended third party beneficiary, that will describe the duties of the parties to construct, install, maintain and repair the Association Maintained Improvements (as such term is defined in the Easement and Maintenance Agreement) in perpetuity, at no cost to the City, the terms of which shall be reasonably satisfactory to the City Attorney's Office.

Section 13. This vacation shall expire by limitation and become void should reconstruction of Apgar Lane not be issued a Certificate of Completion by the City Engineer within three (3) years following adoption of this Ordinance by the Council of the City of Oakland.

Section 14. Should any article, section, subsection, sentence, clause, or phrase of this Ordinance or the attached Exhibits be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

Section 15. This Ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

Section 16. Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this Ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF,  
AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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

EXHIBIT A

Grant Deed for 3845 Telegraph Avenue, recorded 09-28-1992, series no. 1992-313728

RECORDING REQUESTED BY FIRST AMERICAN TITLE GUARANTY COMPANY  
 Order No. 154807  
 Escrow No. 164807  
 Loan No.

92313728

RECORDED IN OFFICIAL RECORDS  
 ALAMEDA COUNTY, CALIF.  
 PATRICK O'CONNELL, CO. RECORDER

SEP 28 1992  
 AM 7:18 PM 7:18:11 11:23:45 6

CITY TAX PAID

MAIL TAX STATEMENTS TO:  
 SAME AS ABOVE

CITY TRANSFER TAX \$ 5,000.00  
 DOCUMENTARY TRANSFER TAX \$ 650.00  
 SURVEY MONUMENT FEE \$ 10.00

TAX PAID  
 ALAMEDA COUNTY

As declared by the undersigned Grantor  
 Disposition of Declarant or Agent determining Tax - Form 706

A.P.N. # 12-967-1 & 12-967-2

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Philip M. Spielman, a married man as his sole and separate property

hereby GRANTS to

Horizon Services, a California nonprofit corporation

the real property in the City of Oakland, County of Alameda, State of California, described as

FOR LEGAL DESCRIPTION, SEE EXHIBIT 'A' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Dated September 17, 1992

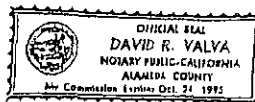
STATE OF CALIFORNIA )  
COUNTY OF Alameda )

On September 22, 1992  
before me David R. Valva, personally  
appeared Phillip M. Spielman

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal  
Signature: [Signature]

[Signature]  
Philip M. Spielman

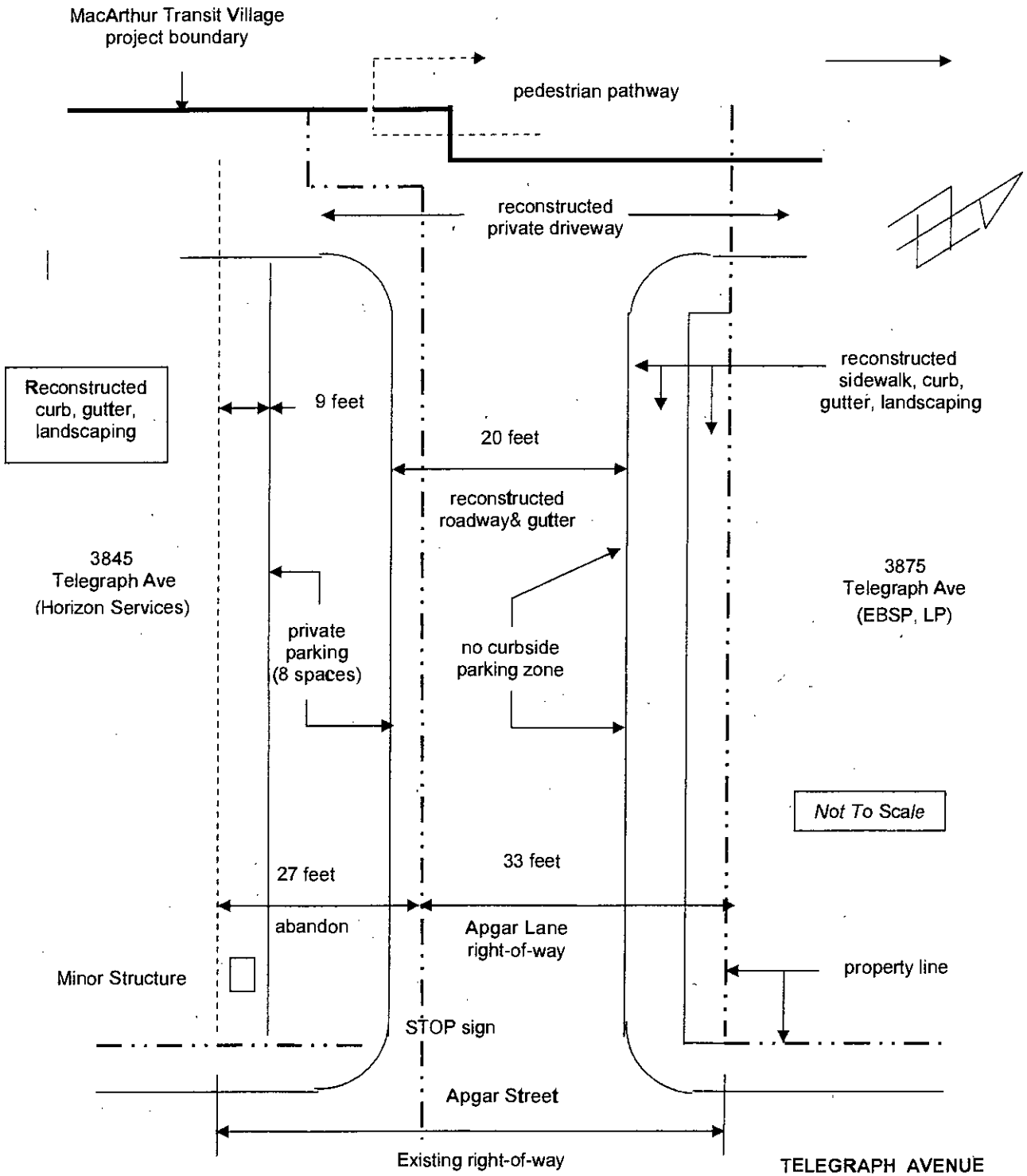


MAIL TAX STATEMENTS AS DIRECTED ABOVE

1002-BM (6/82)

# EXHIBIT B

## Schematic of the Apgar Street Vacation





### **Metes and Bounds of Apgar Street Vacation**

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA AND STATE OF CALIFORNIA, BEING A PORTION OF APGAR STREET, AS SHOWN AND CREATED ON THE "MAP OF THE LUNING TRACT", AS FILED AS FILED OCTOBER 10, 1905 IN BOOK 20 OF MAPS, AT PAGE 76, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 3, AS SHOWN ON SAID MAP, AT THE INTERSECTION OF THE SOUTHERLY LINE OF APGAR STREET AND THE WESTERLY LINE OF TELEGRAPH AVENUE;

THENCE NORTH 77°07'14" WEST ALONG THE NORTHERLY LINE OF SAID LOT 3 AND THE SOUTHERLY LINE OF APGAR STREET, A DISTANCE OF 109.99 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 3, AT AN INTERSECTION WITH THE EASTERLY LINE OF PARCEL "D", AS SHOWN ON "TRACT NO. 8047" AS FILED MARCH 23, 2012 IN BOOK 321 OF MAPS, AT PAGES 41-46, ALAMEDA COUNTY RECORDS;

THENCE NORTH 12°52'46" EAST ALONG THE EASTERLY LINE OF SAID PARCEL "D", A DISTANCE OF 15.00 FEET;

THENCE SOUTH 77°07'14" EAST A DISTANCE OF 10.07 FEET;

THENCE NORTH 12°52'46" EAST A DISTANCE OF 12.00 FEET;

THENCE SOUTH 77°07'14" EAST A DISTANCE OF 100.04 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF TELEGRAPH AVENUE;

THENCE SOUTH 13°08'17" WEST ALONG THE WESTERLY LINE OF TELEGRAPH AVENUE, A DISTANCE OF 27.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,851 SQUARE FEET, MORE OR LESS.


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

REVISED

As revised June 6, 2013

Introduced by  
2013 JUN -6 PM 3:25

Approved as to Form and Legality

  
Office of the City Attorney

\_\_\_\_\_  
Councilmember

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

**A RESOLUTION PROHIBITING VEHICLE PARKING AND STANDING  
AT ALL TIMES AND APPROVING REMOVAL BY TOWING IN APGAR  
LANE (FORMERLY APGAR STREET) BETWEEN ITS INTERSECTION  
AT TELEGRAPH AVENUE AND ITS TERMINATION AT THE  
MACARTHUR TRANSIT VILLAGE PROJECT BOUNDARY**

**WHEREAS**, pursuant to California Streets and Highways Code section 8330 et seq., the City Council has approved the vacation of a portion of Apgar Street, newly renamed as Apgar Lane, between its intersection with Telegraph Avenue and its termination at the southeastern boundary of the MacArthur Transit Village project; and

**WHEREAS**, said vacation will reduce the width of the public right-of-way of Apgar Lane, formerly named Apgar Street, from sixty (60) feet to thirty-three (33) feet and the width of the roadway drive aisle, from a thirty-six (36) foot to a twenty (20) feet drive aisle; and

**WHEREAS**, pursuant to Resolution No. 83516 C.M.S., adopted July 26, 2011, which conditionally approved the Final Map for Tract No. 8047 for the MacArthur Transit Village project, MacArthur Transit Community Partners LLC (MTCP), a California limited liability company (200419810042), will reconstruct without cost to the City of Oakland the narrowed portion of Apgar Lane, including pavement, sidewalks, curbs, gutters, roadway, signs and supporting poles, landscaping, striping, and buried utilities; and

**WHEREAS**, pursuant to the 2010 edition of the California Fire Code, Appendix D, section D103.i, and to Oakland Municipal Code section 15.12.010, said narrowed roadway width is the minimum dimension necessary to provide adequate access for fire apparatus to support fire suppression and rescue operations; and

**WHEREAS**, maintaining said narrowed roadway free of parked and standing vehicles at all times is critical to assure adequate access for fire apparatus to support fire suppression and rescue operations for the properties and structures abutting Apgar Lane; and

**WHEREAS**, pursuant to Oakland Municipal Code section 10.28.250, the Council of the City of Oakland may prohibit parking or standing of vehicles at any time on any street or part of any street, as shown on the attached *Exhibit A*, provided appropriate signs are in place giving notice thereof; and

**WHEREAS**, pursuant to California Vehicle Code section 22507(a), a City may prohibit or restrict the stopping, parking, or standing of vehicles on certain streets or highways, or portions thereof, during all or certain hours of the day; and

**WHEREAS**, pursuant to California Vehicle Code section 22651(n), signs shall be posted giving notice to the public that vehicles illegally parked or left standing will be removed by towing, and

**WHEREAS**, the City Planning Commission certified the MacArthur Transit Village EIR (ER 06004) on June 4, 2008, and on July 15, 2008, pursuant to Ordinance No. 12883 C.M.S., the City Council independently confirmed and adopted as its own findings and determinations (i) the certification of the FEIR and adoption of the CEQA-related Findings made and adopted by the Planning Commission on June 4, 2008, and (ii) the Conditions of Approval and Mitigation Monitoring and Reporting Program adopted by the Planning Commission on June 4, 2008, as modified in the July 1, 2008 City Council Supplemental Agenda Report; and

**WHEREAS**, the City Planning Commission adopted an addendum to said EIR determining that no further environmental review was required on March 16, 2011, and on May 17, 2011, pursuant to Resolution No. 83292 C.M.S., the City Council affirmed the Planning Commission's CEQA determination that no further environmental review was required; and

**WHEREAS**, the City of Oakland has reviewed and considered documentation relevant to the proposed subdivision and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental EIR, as specified in CEQA and the CEQA Guidelines, including without limitation, Public Resources Code Section 2116 and CEQA Guidelines Sections 15162 and 15163; and the requirements of CEQA and the CEQA Guidelines have been satisfied; now, therefore, be it

**RESOLVED**: That the prohibition of vehicle parking and standing at all times and approval of removing by towing in Apgar Lane between its intersection at Telegraph Avenue and its termination at the MacArthur Transit Village project boundary complies with CEQA; and be it

**FURTHER RESOLVED**: That, in accord with the above sections of the California Vehicle Code, and based on the purposes and reasons set forth herein, the Council hereby prohibits the stopping, parking or standing at all times of vehicles in the roadway of Apgar Lane between its intersection at Telegraph Avenue and its termination at the MacArthur Transit Village project boundary, and be it

**FURTHER RESOLVED**: That, in accord with the above sections of the California Vehicle Code, and based on the purposes and reasons set forth herein, the Council hereby authorizes the removal by towing of such vehicles in Apgar Lane between its intersection at Telegraph Avenue and its termination at the MacArthur Transit Village project boundary; and be it

**FURTHER RESOLVED**: That signs approved by the Traffic Engineer of the City of Oakland shall be installed at locations on Apgar Lane approved by both the Traffic Engineer and MTCP,

without cost to the City of Oakland, giving notice of said prohibited vehicle parking and standing and of removal of such illegally parked or standing vehicles by towing.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF,  
AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

# EXHIBIT A

