

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Introduced By

2009 MAY -7 PM 12:50
Councilmember

Approved For Form And Legality


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. 12930 - C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR WITHOUT RETURNING TO COUNCIL TO ACQUIRE THE UNDERLYING FEE SIMPLE INTEREST OF A PORTION OF THE MANDELA PARKWAY RIGHT-OF-WAY BY AN EQUIVALENT EXCHANGE WITHOUT COMPENSATION OF A PORTION OF THE PERALTA STREET RIGHT-OF-WAY NEAR THE INTERSECTIONS OF WEST GRAND AVENUE AND 20th STREET BETWEEN THE CITY AND BRIAN COLLINS AND HEMMAT AND DOKHANCHY ASSOCIATES AND TO EXECUTE AN EQUIVALENT EXCHANGE AGREEMENT

WHEREAS, Brian Collins and Hemmat and Dokhanchy Associates are the owners of the fee simple interest of a triangular shaped lot which is bounded by the intersections of Mandela Parkway, Peralta Street, 20th Street, and West Grand Avenue, and which is described in a Grant Deed, recorded March 14, 2006, series no. 2006-094365, by the Alameda County Clerk-Recorder, and which is more particularly described in *Exhibit A* attached hereto, and which is further identified by the Alameda County Assessor as parcel number 005-0421-003-00; and

WHEREAS, said owners have filed an application (PPE 08054) with the City Engineer of the City of Oakland, as required by the California Streets and Highways Code, and paid all fees for administrative processing, as required by the City of Oakland Master Fee Schedule, requesting that the Council of the City of Oakland vacate an unimproved portion of the Peralta Street right-of-way adjoining said parcel, without valuable consideration to the City; and

WHEREAS, said owners have filed a companion application with the City Engineer requesting that the City accept a quit claim, without valuable consideration to said owners, of the underlying fee simple interest in a portion of the Mandela Parkway right-of-way adjoining said parcel; and

WHEREAS, said vacation and quit claim have been proposed by said owners as an exchange of lands between said owners and the City which are equivalent in fair market value and in current and future rights to the record title; and

WHEREAS, the City Engineer has determined that said proposed quit claim of said portion of the Mandela Parkway right-of-way will not expand nor diminish the useful and usable surface area of said parcel for said owners and their representatives, heirs, successors, and assigns; and

WHEREAS, the City Engineer has further determined that said proposed vacation of the Peralta Street right-of-way will continue the exclusive occupancy of said land area by said owners, which has been the practice for many years of prior owners; and

WHEREAS, the City Engineer has determined that said proposed vacation and acquisition will not expand or diminish the surface areas of the roadways of Peralta Street and Mandela Parkway; and

WHEREAS, pursuant to Ordinance No. 12722 C.M.S, said owners acquired the underlying fee simple interest to said portion of the Mandela Parkway right-of-way from an auction for valuable consideration of surplus City property, as identified in a Grant Deed, recorded March 14, 2006, series no. 2006-094364, by the Alameda County Clerk-Recorder; and

WHEREAS, the City of Oakland previously acquired said property rights to said portions of the Mandela Parkway and Peralta Street rights-of-way from a relinquishment by the California Department of Transportation (Caltrans) of remnant portions of real properties, the air rights of which were previously occupied by the demolished section of Interstate Highway 880 (Nimitz Freeway) damage by the Loma Prieta earthquake in 1989, which are described in a deed, recorded November 2, 1961, reel 444, image 880, by the Alameda County Recorder; and

WHEREAS, said proposed vacation of Peralta Street would continue the exclusive use by the owners of said parcel of the unimproved portion of public right-of-way, which has been enclosed by metal fencing for more than twenty (20) years; and

WHEREAS, pursuant to California Streets and Highways Code section 1805, the proposed remaining fifty-two (52) feet width of Peralta Street adjacent to said proposed vacated public right-of-way will exceed the minimum required width of forty (40) feet; and

WHEREAS, a recent and thorough research of record title documentation and a subsequent land survey by a qualified and licensed land surveyor re-establish the metes and bounds of said parcel, with permanent markers of said property corners and public right-of-way monuments installed in the field, and the metes and bounds of said Mandela Parkway and Peralta Street properties previously relinquished by Caltrans and said fenced and unimproved portions of Peralta Street; and

WHEREAS, said land survey further established that said proposed vacation of Peralta Street consists of approximately 10,985 square feet (orthogonal planer projection) of land area and said proposed quit claim of Mandela Parkway right-of-way consists of approximately 13,781 square feet of land area (orthogonal planer projection); and

WHEREAS, said boundary survey is delineated on Parcel Map No. 9698, attached hereto as *Exhibit B*, and the limits of said proposed vacation and proposed quit claim are delineated on *Exhibit C* attached hereto; and

WHEREAS, the City Engineer has determined that no subsurface, surface, or above surface publicly maintained utilities are located within the portion of Peralta Street proposed for vacation or the portion of Mandela Parkway proposed for acquisition; and

WHEREAS, the City Engineer has further determined that said portion of Peralta Street proposed for vacation has been unimproved for pedestrian and public traffic and has been enclosed by an erected metal fence and has been wholly unmaintained by the City of Oakland for not less than five (5) years preceding the receipt of said application for said vacation; and

WHEREAS, pursuant to California Streets and Highways Code section 8330 et seq., the City Engineer has further determined that the said portion of Peralta Street may be summarily vacated by Resolution of the Council of the City of Oakland, at the option of its elected members; and

WHEREAS, said vacation of Peralta Street will add said real property to the equalized roll of the general levy of property taxes and forever relieve the City of Oakland of the responsibility and potential liability for its maintenance; and

WHEREAS, acquisition of the underlying fee simple interests in said portion of the Mandela Parkway right-of-way will be without valuable consideration to said owners and will not increase the City of Oakland's costs of or liability for maintaining the existing street improvements; and

WHEREAS, pursuant to section 15061(b)(3) of the Guidelines prescribed by the California Secretary of Resources for the requirements of the California Environmental Quality Act of 1970 (CEQA) and to the provisions of the Environmental Review Regulations of the City of Oakland, said vacation and said acquisition are categorically exempted; now, therefore,

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

Section 1: That the Council of the City of Oakland hereby finds that said portion of the public right-of-way of Peralta Street proposed for vacation is surplus to the needs of the City of Oakland and not required for any current or future public purpose and may be vacated to said owners as set forth in the California Streets and Highways Code.

Section 2: That the Council of the City of Oakland hereby finds that said vacation to said owners of said portion of the Peralta Street right-of-way, without valuable consideration to the City of Oakland, and the acquisition by the City of Oakland of the underlying fee simple interest of said portion of the Mandela Parkway right-of-way, without valuable consideration to said owners, is in the best interest of the City of Oakland and is an equivalent exchange of real property in all purposes and fair market values and record title rights and interests.

Section 3: That said owners promise 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 said vacation of the public right-of-way of Peralta Street and that the hereinabove condition shall be binding upon said owners and their beneficiaries, heirs, assigns, and successors in interest and also on the successive owners of said vacated right-of-way; and be it

Section 4: That the City Administrator, or his or her designee, is hereby authorized, without returning to Council, to acquire, without valuable consideration to the owners of parcel no. 005-0421-003-00, said portion of the Mandela Parkway right-of-way, through an instrument acceptable to the City Attorney of the City of Oakland.

Section 5: The Equivalent Exchange Agreement for this property swap shall be approved as to form and legality by the Office of the City Attorney and a copy shall be filed with the Office of the City Clerk .

Section 6: Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit 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 7: 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 8: 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, MAY 19 2009, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BROOKS~~, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, ~~QUAN, REID~~, AND
PRESIDENT BRUNER - 5

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Quan, Reid, Brooks - 3

ATTEST:



LATONDA SIMMONS

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

DATE OF ATTESTATION

5-21-09