

2010 JUL 15 PM 3:47
Councilmember

K Jain
City Attorney

OAKLAND CITY COUNCIL

Ordinance No. 13038 - C.M.S.

ORDINANCE CONDITIONALLY ABANDONING A PORTION OF A PUBLIC UTILITY EASEMENT AND A SANITARY SEWER MAIN ADJOINING EAST 11th STREET AND 3rd AVENUE TO FACILITATE RECONSTRUCTION OF THE DOWNTOWN EDUCATION COMPLEX BY THE OAKLAND UNIFIED SCHOOL DISTRICT

WHEREAS, pursuant to California Streets and Highways Code Section 8300 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 September 7, 2010, beginning at 5:30 o'clock, post meridian local time, to adopt findings for a proposed ordinance conditionally vacating a portion of public service easement and conditionally abandoning a apportion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue which are located across three contiguous parcels owned by the Oakland Unified School District; and

WHEREAS, said parcels are identified by the Alameda County Assessor with the numbers 019-0029-014-07, 019-0023-001-01, and 019-0024-001-01, and by the City of Oakland with the addresses 1020 2nd Avenue, 1100 3rd Avenue, and 1029 4th Avenue, and by the Oakland Unified School District as the Downtown Education Complex; and

WHEREAS, the Oakland Unified School District acquired fee simple interest to said parcels through a grant deed, recorded _____, series no. _____ by the Alameda County Recorder; and

WHEREAS, said parcels were originally platted in Blocks 23, 24, and a portion of 29, as shown on the "Map of Clinton - H.A. Higley's Survey", recorded June 20, 1854, in book B of maps, on page 537, by the Alameda County Recorder, as shown on **Exhibit B** attached hereto; 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:

- that the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); 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 the Oakland Unified School District owns the fee interest of the real property encumbered by the portion of the public service easement proposed to be vacated; and
- the proposed vacation does not require reservation of a public service easement for existing or future subsurface or above-ground utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility; 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 or pedestrian inconvenience nor decrease traffic or pedestrian safety; and be it
- the proposed vacation will benefit the general public and the residents and children of the City of Oakland by providing an enlarged and modern educational and health care facility; and be it
- the Oakland Unified School District shall be responsible, at its sole cost, for the abandonment of existing publicly maintained utilities, with permits issued by the City of Oakland, to the satisfaction of the City Engineer and for reconstructing existing public infrastructure and appurtenances as may be determined by the City Engineer to be necessary for the re-establishment of efficient infrastructure operation and safe access for maintenance personnel; and

WHEREAS, the City Engineer, in his official capacity, has made the following determinations:

- said land area comprising the portion of the public service easement proposed for vacation is necessary to accomplish the reconstruction of the Downtown Education Complex by the Oakland Unified School District for the benefit of the general public and the residents and children of the City of Oakland; and
- said infrastructure comprising the portion of the sanitary sewer main proposed for abandonment will be removed from the inventory of public infrastructure maintained by the City of Oakland; and
- the proposed vacation of said portion of the public service easement will not adversely impact current or future traffic or pedestrian access to the surrounding real properties; and
- the portion of the public service easement proposed for vacation is wholly located within the corporate limits of the City of Oakland; and
- the proposed vacation of said portion of the public service easement will not limit public use of or impede public access for non-motorized transportation.

WHEREAS, the Superintendent of Streets of the City of Oakland, in his official capacity, has determined that abandonment of said portion of the sanitary sewer main will not adversely impact the efficient transport of effluent within the sewer sub-basin; and

WHEREAS, the requirements of the California Environmental Quality Act (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 CEQA Guidelines Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects) of the California Environmental Quality Act Guidelines, the proposed vacation is categorically exempted; and

WHEREAS, a plat delineating the metes and bounds of the extent and location of the proposed vacation of said portion of the public service easement is attached hereto as *Exhibit A*; now, therefore,

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

1. The conditional vacation of a portion of a public service easement (permit PPE 09063) adjoining East 11th Street and 3rd Avenue, as delineated in the attached *Exhibit A*, is hereby ordered.
2. This order of vacation shall not except, exempt, and reserve a public service easement within the whole area of said vacated land for the benefit of companies regulated by the California Public Utilities Commission and the City of Oakland and the East Bay Municipal Utility District.
3. This order of vacation shall expire by limitation and become void in the event the Oakland Unified School District and its representatives, heirs, successors, and assigns and successive owners of said vacated portion of a public service easement, at their sole expense (both jointly and severally), fail to complete all of the following required actions within each of the time limitations set forth below:
 - a. within two (2) years following adoption of this ordinance, file a complete application with the City of Oakland and pay applicable fees for a Parcel Map Waiver or a Parcel Map describing and delineating the merger of said three (3) contiguous parcels which contain the portion of the public service easement not vacated by the adoption of this ordinance; and
 - b. within three (3) years following adoption of this ordinance, begin construction of the abandonment of said existing sanitary sewer main (permit PX 10900058); and
 - c. within five (5) years following adoption of this ordinance, obtain final approvals from the City Engineer of the City of Oakland for said required abandonment permits.

4. By the acceptance of the vacated portion of the public service easement, the Oakland Unified School District acknowledges each of and agrees to all of the following:
- a. the Oakland Unified School district shall 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 said vacation and regardless of responsibility for negligence; and
 - b. the City of Oakland makes no representations or warranties as to the conditions beneath said vacated section of the public right-of-way; and that by accepting this vacation, the Oakland Unified School District agrees that it will use the vacated area in the future at its own risk; and
 - c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Oakland Unified School District hereby waives and fully releases and forever discharges the City of Oakland and its officers, officials, representatives, employees, 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 excavation 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
 - d. the Oakland Unified School District 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"; and

- e. the Oakland Unified School District recognizes 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 the vacation of said portion of the public service easement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
 - f. the Oakland Unified School District shall be responsible in perpetuity for the abandonment of all infrastructure improvements located within the vacated public service easement.
5. The hereinabove conditions shall be binding upon the Oakland Unified School District and the successive owners of said vacated portion of the public service easement and their representatives, heirs, successors, and assigns.
 6. 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 with and recorded by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 5 2010, 2010

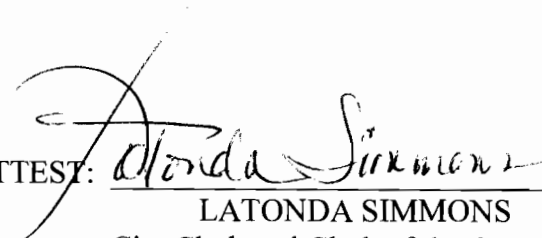
PASSED BY THE FOLLOWING VOTE:

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

Introduction Date SEP 21 2010

DATE OF ATTESTATION October 18, 2010

EXHIBIT A

Metes And Bounds Delineating A Proposed Abandonment Of A Portion Of A Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street And 3rd Avenue To Facilitate Reconstruction Of The Downtown Education Complex By The Oakland Unified School District

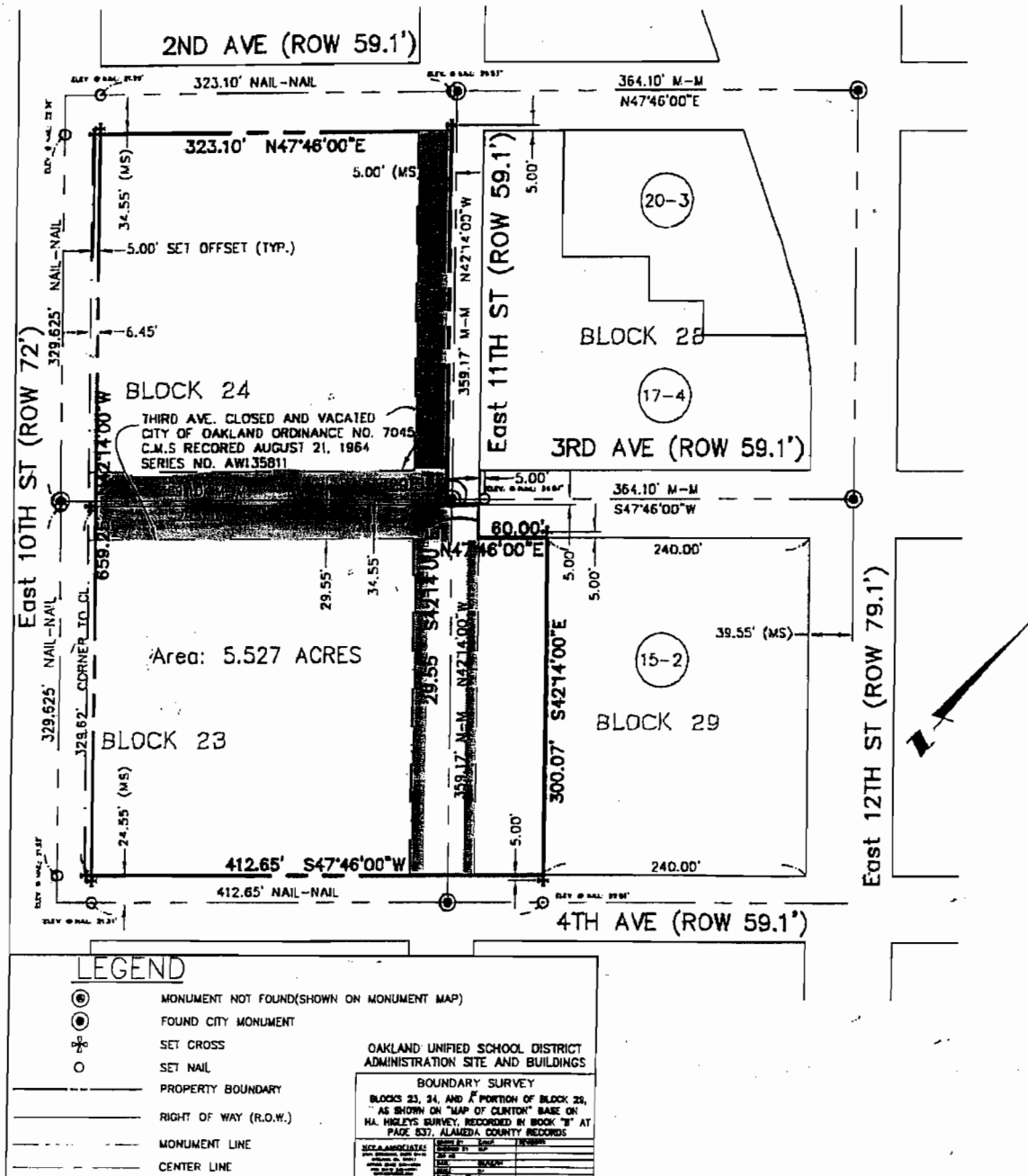
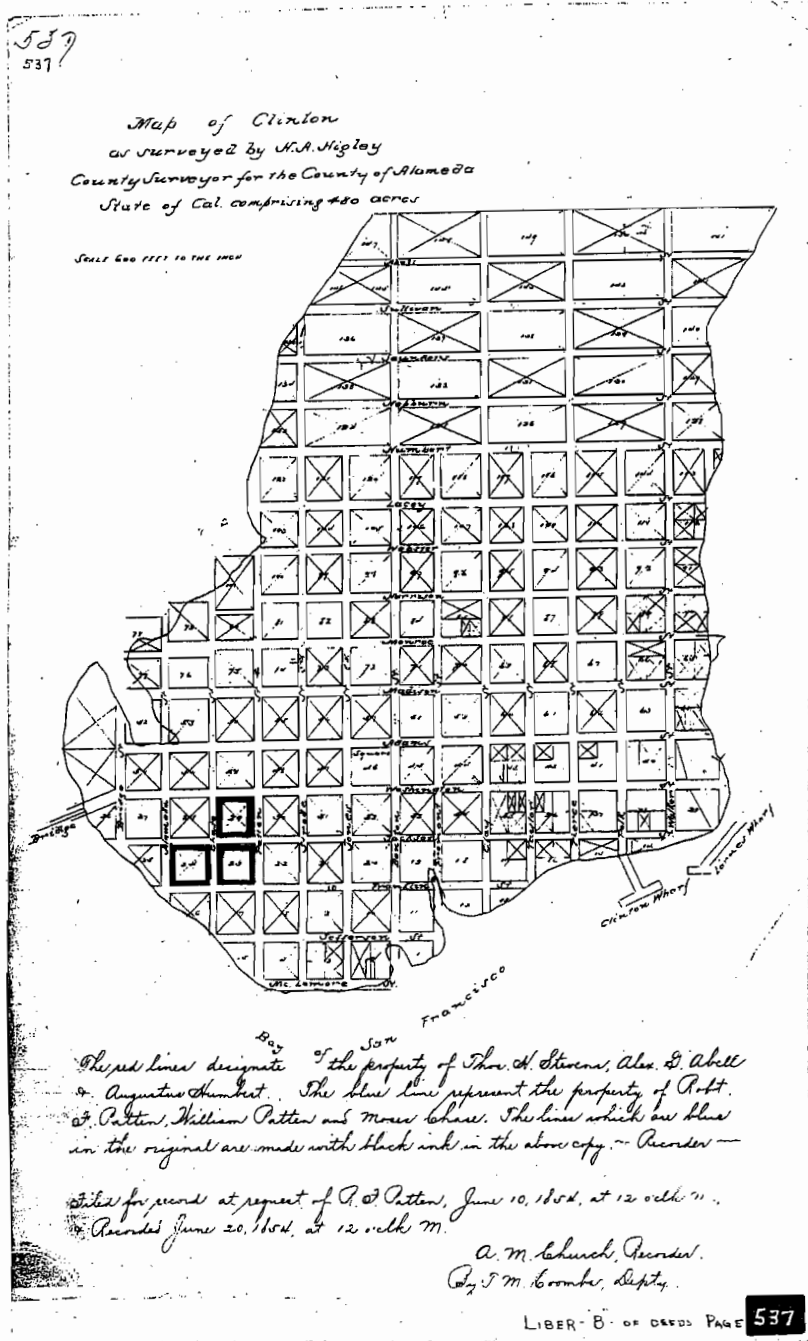


EXHIBIT B

Subdivision Map Entitled "Map Of Clinton, As Surveyed By H. A. Higley",
Recorded June 20, 1854, In Book B Of Maps, Page 537, By The Alameda County Recorder



NOTICE AND DIGEST

ORDINANCE CONDITIONALLY VACATING A PORTION OF A PUBLIC UTILITY EASEMENT AND CONDITIONALLY ABANDONING A PORTION OF A SANITARY SEWER MAIN ADJOINING EAST 11th STREET AND 3rd AVENUE TO FACILITATE RECONSTRUCTION OF THE DOWNTOWN EDUCATION COMPLEX BY THE OAKLAND UNIFIED SCHOOL DISTRICT

This ordinance will conditionally vacate a portion of a public utility easement and abandon a portion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue which bifurcate three existing parcels owned by the Oakland Unified School District. The reconstruction of two (2) public schools and child development centers will be over the abandoned sewer main and within the vacated easement. The remaining portion of the easement and the sewer main system will not be effected by the construction.