

RESOLUTION NUMBER R- 301542
DATE OF FINAL PASSAGE JUN 19 2006

WHEREAS, section 8300 et seq. of the California Streets and Highways and San Diego Municipal Code section 125.0901 et seq. provides a procedure for the summary vacation of public street easements by City Council resolution where the easements are no longer required; and

WHEREAS, the unimproved portion of Spruce Street located just west of Falcon Street and east of Goldfinch Street, as described in the legal description marked as Exhibit "A," and shown on Drawing No. 20212-B, marked as Exhibit "B," is excess right of way and is not required for street or highway purposes; and

WHEREAS, the affected property owner has requested the vacation of the unimproved portion of Spruce Street located just west of Falcon Street and east of Goldfinch Street, to unencumber his property; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Public-Right-of-Way Vacation Permit No. 45894:

PUBLIC RIGHT-OF-WAY VACATION – SAN DIEGO MUNICIPAL CODE [SDMC]
SECTION 125.0941

1. **There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.** The portion of the public right-of-way proposed to be vacated has never been utilized as a street and would not provide a logical connection to any other street or property. The portion of Spruce Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties or rights-of-way. Additionally, the area proposed to be vacated is inaccessible to vehicles and foot traffic due to the steep topography and therefore unusable for pedestrian activities. Therefore, it is not anticipated that the portion of the right-of-way proposed to be vacated would provide a public use of a similar nature.

2. **The public will benefit from the action through improvised use of the land made available by vacation.** The abutting property owners would benefit in that the vacation would revert the dedicated portion of the right-of-way back to private ownership. Additionally, allowing the vacation of this portion of right-of-way would reduce City liability. The proposed vacation would include the establishment of a general utility easement for the existing sewer pipe and overhead utility lines. Therefore, the proposed right-of-way vacation would benefit the public by minimizing public liability while maintaining the public use through a general utility easement.

3. **The vacation does not adversely affect any applicable land use plan.** The Uptown Community Plan recommends that public rights-of-way be maintained where they abut property that is designated for open space preservation. No portion of the proposed alley vacation or adjacent properties has been so designated. Additionally, the area proposed for vacation is zoned for single-family development, and the land would revert to the abutting single-family property owners. Therefore, the proposed right-of-way vacation does not adversely impact the recommendations found in the community plan.

4. **The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.** The California Vehicle Code [2001] defines "Street" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. The 80-foot by 200-foot area proposed for vacation was dedicated as an 80-foot wide right-of-way which would have extended Spruce Street through from Goldfinch Street to Falcon Street. Records indicate the dedication likely occurred as part of the subdivision and was accepted by the City in 1923. The purpose and intent for which the public right-of-way was originally dedicated no longer is in effect in that the street has not been improved and there are no future plans to do so. Therefore, the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the proposed vacation.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, as follows:


1. That the undeveloped portion of the unimproved portion of Spruce Street located just west of Falcon Street and east of Goldfinch Street, as described in the legal description marked as Exhibit "A," and shown on Drawing No. 20212-B, marked as Exhibit "B," and on file in the office of the City Clerk as Document No. RR- 301542, which are by this reference incorporated herein and made a part hereof, is ordered vacated.

2. That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

BE IT FURTHER RESOLVED, that this activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



David E. Miller
Deputy City Attorney

DEM:als:cfq
05/23/06
Or.Dept:DSD
R-2006-1005
MMS#3322

Passed by the Council of The City of San Diego on JUN 19 2006, by the following vote:

| Council Members | Yeas | Nays | Not Present | Ineligible |
|-------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Scott Peters | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Kevin Faulconer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Toni Atkins | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Anthony Young | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Brian Maienschein | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Donna Frye | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jim Madaffer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ben Hueso | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage JUN 19 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Debbie Swenson-Cruz*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R-301542