

(R-2009-239)

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9/8

RESOLUTION NUMBER R- 304081

DATE OF FINAL PASSAGE SEP 08 2008

A RESOLUTION AUTHORIZING THE VACATION OF  
PORTIONS OF 28<sup>TH</sup> STREET.

WHEREAS, California Streets and Highways Code section 8300, *et seq.*, including Sections 8330, 8340 and 8350, and San Diego Municipal Code section 125.0910, in conjunction with the findings of Section 125.0941, provide a procedure for the summary vacation of a public right-of-way by City council resolution; and

WHEREAS, the Applicant Helen M. Dershem and Ruth Johnson are the owners of Parcel 1 of Map No. 4837 adjacent to 28<sup>th</sup> Street; and

WHEREAS, the Applicant, as the affected property owner, has requested vacation of one public right-of-way [collectively, the Public Rights-of-Way to be vacated] comprising of Lot 1 and the easterly 5 feet of Lot 2, Block 6, Reed & Hubbell's Addition, Map No. 327 and was noted as dedicated on the Reed & Hubbell's Addition Resubdivision No. 1 Map No. 4837 in 1961 marked as Exhibit "A," and on file in the Office of the City Clerk as Document No. RR-304081-1; and

WHEREAS, this portion of public right-of-way is an access public right-of-way and is not required for street and highway purposes; and

WHEREAS, it is proposed that portions of 28<sup>th</sup> Street be vacated; and

WHEREAS, in connection with said vacation, the City desires to reserve a utility easement for the benefit of Pacific Bell Telephone Co.; and

WHEREAS, there is no present or prospective use for the public right-of-way, either for the facility for which the right of way was originally acquired or for any other public use of a like nature that can be anticipated, in that the right of way is not needed for public street, bikeway, or open space purposes; and

WHEREAS, the public will benefit from the vacation through improved use of land; and

WHEREAS, the vacation does not adversely affect any applicable land use plan; and

WHEREAS, the public facility for which the right of way was originally acquired will not be detrimentally affected by this vacation; 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, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required bylaw 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, as follows:

1. That 28<sup>th</sup> Street, as more particularly shown on Drawing No. 20341-B, on file in the Office of the City Clerk as Document No. RR- 304081 - 2, which said drawing is attached hereto and made a part hereof, is ordered vacated.

2. That the City of San Diego [City]reserves and excepts from the foregoing vacation the permanent easement as more particularly described hereinafter: Reserving and excepting to Pacific Bell Telephone Co. the right, easement and privilege of placing, constructing, repairing, replacing, maintaining, using and operating utilities, including but not limited to general utilities and all necessary and property fixtures and equipment for use in

connection therewith, through, over, under, upon, along and across the above described easement to be vacated and abandoned, together with the right of ingress thereto and egress therefrom, together with the right to maintain the said easement free and clear of any excavation or fills, the erection or construction of any building or other structures, the planting of any tree or trees thereon, or the drilling or digging of any well or wells thereon, together with the right to otherwise protect from all hazards the operation and use of any right reserved. Upon acquisition of an encroachment permit from the City Engineer pursuant to the Municipal Code of the City, the owners of the underlying fee may utilize the above described parcel of land for structures, the planting or growing of trees or the installation of privately owner pipelines. The Pacific Bell Telephone Co. shall have the right to permit the use of the easement herein described by their utility either by conveyance of the necessary right to so use or by permitting such utility to utilize such right under and pursuant to franchise with the City of San Diego.

3. That the easement reserved herein is in, under, over, upon, and along and across the portions of 28<sup>th</sup> Street, vacated by this document and as particularly shown on Drawing No. 20341-B, on file in the Office of the City Clerk as Document No. RR- 304081 - 2.

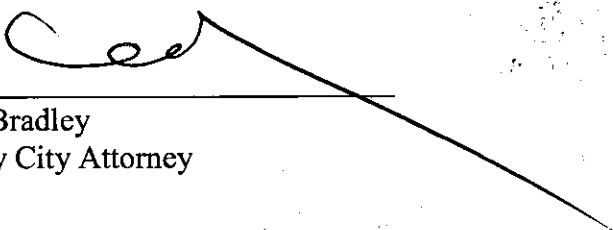
4. That the Development Services Department shall cause a certified copy of this resolution, with attached exhibits, to be record in the Office of the County recorder.

(R-2009-239)

BE IT FURTHER RESOLVED, the Council of the City of San Diego finds that this action is exempt from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15301.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
Todd Bradley  
Deputy City Attorney

TB:bas  
08/27/08  
Or.Dept: READ  
R-2009-239  
MMS #6634

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 08 2008.

ELIZABETH S. MALAND  
City Clerk

By   
\_\_\_\_\_  
Deputy City Clerk

SAN DIEGO CITY  
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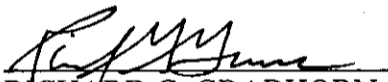
-PAGE 4 OF 4-

R. 304081

EXHIBIT A  
LEGAL DESCRIPTION FOR  
STREET VACATION

LOT 1 AND THAT PORTION OF LOT 2, ALL IN BLOCK 6 OF REED & HUBBELL'S ADDITION, ACCORDING TO MAP THEREOF NO. 327, FILED IN THE OFFICE OF THE COUNTY RECORDER ON OCTOBER 7, 1914, GRANTED TO THE CITY OF SAN DIEGO PER DOCUMENT RECORDED OCTOBER 13, 1959 IN BOOK 7974, PAGE 283, O.R. TOGETHER WITH THOSE PORTIONS OF LOT 1 OF REED & HUBBELL'S ADDITION RESUBDIVISION NO. 1, INDICATED AS "PORTION OF 28<sup>TH</sup> STREET DEDICATED HEREON", ACCORDING TO MAP THEREOF NO. 4837, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 5, 1961 AS INSTRUMENT NO. 004837 DEDICATED ON SAID MAP NO. 4837, ALL IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

CONTAINING 4,305 SQUARE FEET, MORE OR LESS.

  
RICHARD G. GRABHORN      11/3/06  
RCE 19375                      DATE  
EXP. 9-30-05



J.O. NO. 424216  
PTS NO. 66582  
DWG. NO. 20341-B

DOCUMENT NO. **304081**  
FILED SEP 08 2008  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

