

RESOLUTION NUMBER R- 311875

DATE OF FINAL PASSAGE JUL 10 2018

ITEM # 338B  
7/10/18

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO VACATING A PORTION OF SAN DIONICIO STREET (RIGHT-OF-WAY VACATION NO. 1782175) FOR FROST STREET - PROJECT NO. 507338.

WHEREAS, California Streets and Highways Code section 8320 *et seq.* and San Diego Municipal Code section 125.0901 *et seq.* provide a procedure for the vacation of public rights-of-way by City Council resolution; and

WHEREAS, Suzanna Frost filed an application to vacate the westerly one-half of San Dionicio Street (formerly Kearney Street), as dedicated to public use and shown on miscellaneous Map No. 35, lying easterly of Lot 4 of Block 166 of La Playa, in the City of San Diego, County of San Diego, State of California, according to the Map of the Pueblo Lands of San Diego by Charles H. Poole in 1856, filed in the Office of the San Diego County Recorder, March 4, 1872, and known as Subdivision Map 380, being described as Right-of-Way Vacation No. 1782175; and

WHEREAS, Right-of-Way Vacation No. 1782175 is located on property owned by Suzanna Frost; and

WHEREAS, in connection with Right-of-Way Vacation No. 1782175, the City desires to reserve and accept an expanded public sewer easement; 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 by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on July 10, 2018, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to Right-of-Way Vacation No. 1782175; the Council finds that:

**(a) 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 unimproved, excess remnant right-of-way of San Dionicio Street does not serve as vehicular or pedestrian access for any properties within the area. The area to be vacated is adjacent to two properties, both of which are owned by the applicant and take vehicular access from Qualtrough Street. The proposed street vacation is located at a dead end, where the right-of-way to the east and to the north has already been closed and/or vacated (Street Closure 989 Quiet Title Action No. 255076 and Street Vacation per Resolution No. 14113 dated June 9, 1913). Therefore, there is no existing right-of-way connecting Roger Street to Qualtrough Street, and no existing or planned access for pedestrians or vehicular traffic.

The Transportation Element of the Peninsula Community Plan does not identify this segment of San Dionicio Street as a needed roadway or pedestrian path, or as a key component of access and circulation in the community. The unimproved portion of San Dionicio Street proposed to be vacated is a remnant of already closed and vacated right-of-way that has no connectivity to any other street. The adjoining paper street sections of San Dionicio Street to the east and to the south have been vacated and closed. Therefore, the remaining 25-foot-wide excess right of way does not comply with current street design standards. The remnant portion of

the right-of-way proposed to be vacated is vacant and unimproved. This section could not be improved for vehicular travel and it provides no pedestrian access.

Therefore, 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.

**(b) The public will benefit from the action through improved use of the land made available by the vacation.**

As public right-of-way, the use of this land is limited to circulation and public utility. However, due to adjacent street vacations, the project site cannot feasibly be used for these purposes. Therefore, the City controls and is liable for an area that cannot be used for public purposes. Properties adjacent to the right-of-way will benefit from the vacation because they will control, maintain and be responsible for this area. The City of San Diego and the County of San Diego will benefit from the increase in property value by increasing the area of privately owned land subject to property tax. With an increase of tax revenue the general public will benefit by the vacation of the existing right-of-way by the increase of available public funds. The public will also benefit by the reduction of liability to the City of San Diego from land it controls yet gains no benefit or use from.

The adopted Peninsula Community Plan designates the site for residential development. Because the land has never been used as right-of-way, it is in the public interest to vacate the right-of-way and transfer responsibility of it to the adjacent property owners. Therefore, the public will benefit from the action through improved use of the land made available by the vacation.

**(c) The vacation does not adversely affect any applicable land use plan.**

The portion of right-of-way proposed to be vacated is not identified in the Peninsula Community Plan as a public view corridor or needed street segment. The Transportation and Shoreline Access Element of the Community Plan recommends that curb cuts or street vacation requests which reduce available on-street parking should not be allowed unless comparable replacement parking is provided in the immediate vicinity. Because this section of San Dionicio Street is unimproved, reduction of on-street parking is not an issue, and the request would not adversely affect the Peninsula Community Plan.

**(d) The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.**

San Dionicio Street was originally acquired as part of a street network through map dedication. However, because portions of this street have already been vacated, the project site cannot be used for public street purposes. It is not possible to improve the remnant right-of-way to current public street standards, and it does not represent a logical extension of the existing road network.

Therefore, the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

BE IT FURTHER RESOLVED, that Right-of-Way Vacation No. 1782175, in connection with Coastal Development Permit 1898596, as more particularly described in the legal description marked as Exhibit "A" and shown on Drawing No. 39667-B, marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, is ordered vacated subject to the following conditions, which are made a part of this resolution:

1. Prior to recording the Public Right-of-Way Vacation, the Owner/Applicant shall obtain approval for a 15-foot wide Public Sewer Easement to be centered over the top of the existing 6-foot wide Public Sewer Easement located on APN's 532-351-06 and 532-351-07 per City of San Diego Doc. No. 48072 O.R. dated 12 May 1948, satisfactory to the Director Public Utilities Department and City Engineer.


2. Prior to recording the Public Right-of-Way Vacation, the Owners of both abutting lots (APN's 532-351-06 and 532-351-07) shall obtain City approval for a lot-specific Encroachment, Maintenance and Removal Agreement (EMRA) to address any and all improvements on their property which will be retained within the new 15-foot wide Public Sewer Easement, satisfactory to the Director Public Utilities Department and City Engineer.

3. The proposed 15-foot wide Public Sewer Easement, the proposed EMRAs, and the proposed Public Right-of-Way Vacation shall be recorded concurrently by the County of San Diego, satisfactory to the Director Public Utilities Department and City Engineer.

BE IT FURTHER RESOLVED, that the Development Services Department shall record a certified copy of this resolution with attached exhibits, attested by the City Clerk under seal, in the Office of the County Recorder.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
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Casey E. Shaw  
Deputy City Attorney

CS:als  
06/18/2018  
Or.Dept:DSD  
Doc. No.: 1772601

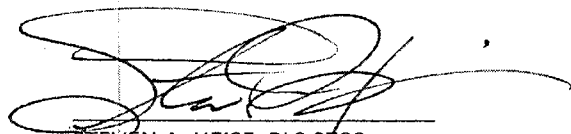
**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**WESTERLY HALF OF SAN DIONICIO STREET VACATION**

ALL THAT PORTION OF THE WESTERLY ONE HALF OF SAN DIONICIO STREET (FORMERLY KEARNEY STREET), AS DEDICATED TO PUBLIC USE AND SHOWN ON MISCELLANEOUS MAP NO. 35, LYING EASTERLY OF LOT 4 OF BLOCK 166 OF LA PLAYA, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF THE PUEBLO LANDS OF SAN DIEGO BY CHARLES H. POOLE IN 1856, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER MARCH 4TH, 1872 AND KNOWN AS SUBDIVISION MAP NUMBER 380.

ATTACHED HERETO IS A DRAWING NO. 39667-B LABELED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.



STEVEN A. HEISE, PLS 8788  
LICENSE EXPIRATION: 12-31-2018

01-30-2018



PTS: 507338

IO: 24006919

DWG NO.: 39667-B



Passed by the Council of The City of San Diego on JUL 10 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 10 2018.

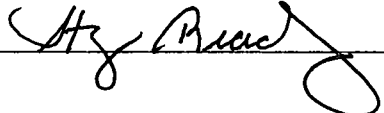
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

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

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

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