

RESOLUTION NUMBER R- 315504

DATE OF FINAL PASSAGE APR 22 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO VACATING A SLOPE EASEMENT AND DRAINAGE EASEMENT LOCATED AT 4970 MARKET STREET- PROJECT NO. PRJ-1102562, EASEMENTS VACATION NO. PMT-3246237.

WHEREAS, California Streets and Highways Code section 8320, *et seq.* and San Diego Municipal Code section 125.1001, *et seq.* provide a procedure for the vacation of public easements by San Diego City Council resolution; and

WHEREAS, MUY BONITA DEVELOPMENT PARTNERS, LLC filed an application to vacate a slope easement and a drainage easement, being described as Easement Vacation No. PMT-3246237 (Project); and

WHEREAS, Easement Vacation No. PMT-3246237 is located at 4970 Market Street in the Commercial--Community (CC-3-6) zone within the Encanto Neighborhoods Community Plan area on property owned by MUY BONITA DEVELOPMENT PARTNERS, LLC; and

WHEREAS, under San Diego 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 April 22, 2024, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to Easement Vacation No. PMT-3246237, the Council finds that:

- (a) **There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired, or for any other public use of a like nature that can be anticipated.**

The Project proposes the vacation of a slope easement and a drainage easement at 4970 Market Street.

Slope Easement: The slope easement proposed for vacation was recorded on September 12, 2019, as Document No. 2019-0398351 of Official Records shown on Drawing No. 40432-B. As part of the 2020 Complete Streets Capital Improvement Project along Market Street, a slope easement was required based on the topography at the time of the public right-of-way improvements, as noted in the as-built Drawing (DWG) No. 40810-D. The improvements are complete and the slope easement is no longer required. The slope easement provided additional area within private property to accommodate construction activity for the adjacent right-of-way improvements. The improvements included expanded sidewalks, bicycle lanes, crosswalks, medians, streetlights, traffic signal modifications, landscaping, and curb extensions to help with traffic. In addition to the slope easement, an Irrevocable Offer to Dedicate (IOD) was recorded as Document No. 2020-0282717, Drawing No. 40430-3-B to permanently dedicate additional right-of-way along the Market Street frontage to accommodate the new improvements. As the improvements are completed, the slope easement is no longer needed for the purpose it was acquired. This action will remove the slope easement from within the private property to allow for the previously entitled Northwest Village Creek project No. 230777 to be constructed.

Drainage Easement: The drainage easement proposed for vacation was recorded on May 29, 1968, as Document No. 90323, Series 9, Book 1968 of Official Records shown on Drawing No. 11531-B. It serves an existing storm drain that crosses the site through the easement. To implement the previous discretionary approvals the existing storm drain needs to be vacated, and a new storm drain will be realigned to follow the property line and reconnect at the southern main. Because the storm drain line will remain in use, it must be vacated and rededicated within the Project site and not vacated as a whole. This vacation is

conditioned requiring the new storm drain easement to be dedicated and constructed prior to the recordation of this vacation.

The slope easement was required only during the public right-of-way improvements which have been constructed and the drainage easement is being relocated to accommodate previous discretionary approvals. The storm drain system within the existing easement is proposed to be vacated in place and re-routed along the southern portion of the property. As conditioned by this Resolution, prior to the recordation of the Easement Vacation, a new storm drain easement will be dedicated, and new facilities will be constructed to replace the existing facility. Therefore, upon the dedication of the new storm drain easement, construction of the new storm drain facility within the easement, termination of the existing storm drain facilities, and recordation of the Easement Vacation to vacate the easement in its entirety, there is no present or prospective public use for the easements, either for the facility or purpose 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 utilization of the land made available by the vacation.

The Project site has remained underutilized for several years and has become a public nuisance. These easements are proposed for vacation to allow the construction of a previously approved discretionary project, Northwest Village Creek project No. No. 230777, the phased multi-use development approved by Planning Commission on June 13, 2013, for a Vesting Tentative Parcel Map No. 912367, Site Development Permit No. 826122 and Conditional Use Permit No. 923305 by Resolution No. 4920-1-PC.

The storm drain system within the existing easement is proposed to be vacated in place and re-routed along the southern portion of the property. As conditioned by this Resolution, prior to the recordation of the Easement Vacation, a new storm drain easement will be dedicated, and new facilities will be constructed to replace the existing facility. The public will benefit from the vacation through the improved utilization of the land as the site may be developed with a residential use anticipated in both the Community Plan and previously entitled permits. The proposed easement vacation of both the slope and drainage easement will facilitate the development and help remove a public nuisance while providing housing units that will help address the housing crisis currently taking place in San Diego.

In addition, the improved utilization of the land made possible by the proposed vacations will facilitate the payment of additional property taxes on the new improvements, benefiting the City as a whole.

The vacations will allow the site to be redeveloped and reduce the nuisance of vacant land by providing much-needed housing in the community. Therefore, the public will benefit from the action through improved utilization of the land made available by the vacation.

(c) The vacation is consistent with any applicable land use plan.

The Encanto Neighborhoods Community Plan (ENCP) designates the site as Community Mixed Use-Medium (30-44 du/ac). The proposed easement vacations are consistent with this designation and the ENCP as they do not directly propose physical development and do not contradict any goal or policy of the plan. However, they will facilitate the mixed-use development of the Northwest Village Creek project No. No. 230777 that meets this designation. ENCP Policy P-LU-7 to “Promote and enhance the Village District at Euclid/Market, Market/47th, along the Imperial corridor and at the 62nd Street trolley station”, anticipates this site to be redeveloped as a mixed-use site, making the easement vacations consistent with the ENCP by helping to remove obstacles to develop the site. Therefore, the vacation is consistent with any applicable land use plan.

(d) The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the vacation or the purpose for which the easement was acquired no longer exists.

The purposes for which the slope easement was acquired no longer exists; Market Street Complete Streets improvements have been completed at the Project site’s frontage removing the need for the slope easement.

The purpose for which the drainage easement was originally acquired was to serve development that is no longer on the site. To redevelop the site based on the discretionary approvals for the Northwest Village Creek project, the existing storm drain will be vacated, and a new storm drain will be realigned to follow the property line and reconnect at the southern main. Because the storm drain line will remain in use, it must be vacated and rededicated within the Project site and not vacated as a whole. The new storm drain easement will be dedicated and constructed prior to the vacation of the current easement. The realignment of the storm drain will not be detrimentally affected by the vacation since a rededication of the drainage easement will maintain the connection to the storm drain system. The reconfiguring of the storm drain will be located in a more desirable location along the property line, meet current engineering standards, and maintain the City’s existing ability to access the area for maintenance and repair. Therefore, the public facility or purpose for which the slope and drainage easements were originally acquired will not be detrimentally affected by the vacation and the purpose for which the easements were acquired no longer exists.

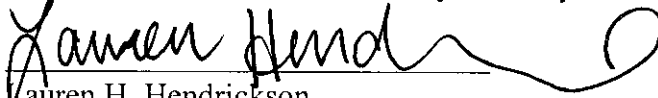
BE IT FURTHER RESOLVED, that Easement Vacation No. PMT-3246237, as more particularly described in the legal description marked as Exhibit "A" and shown on Drawing Nos. 101116-1-B and 101116-2-B marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, is ordered vacated subject to the following conditions which are made a part of this resolution:

1. Prior to the recordation of the drainage easement vacation per Drawing No. 101116-2-B, the Owner/Permittee shall dedicate and construct a new 20-foot storm drain that follows the property line and reconnects at the southern main to the satisfaction of the City Engineer.
2. The Owner/Permittee shall comply with the Mitigation Monitoring and Reporting Program (MMRP) as specified in Mitigated Negative Declaration (MND) No. 230777/ SCH No. 2013041016, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:
 - Historical Resources (Archaeology)
 - Paleontological Resources.

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


Lauren H. Hendrickson
Deputy City Attorney

LNH:cm

March 18, 2024

Or.Dept: DSD

Doc. No. 3596224

Attachments:

1. Exhibit A: Legal Description
2. Exhibit B: Drawing Nos.101116-1-B and 101116-2-B

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 22 2024.

DIANA J.S. FUENTES
City Clerk

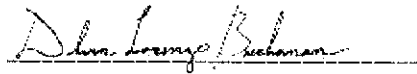
By 
Deputy City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION
SLOPE EASEMENT – VACATION

ALL OF THAT SLOPE EASEMENT LYING WITHIN PARCEL 3 OF PARCEL MAP NO. 21146, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RECORDED JULY 30, 2014, SAID SLOPE EASEMENT GRANTED TO THE CITY OF SAN DIEGO PER GRANT DEED RECORDED SEPTEMBER 12, 2019 AS DOC. NO. 2019-0398351 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY.

CONTAINING 2,919.81 SQ. FT. (0.067 ACRES).

ATTACHED HERETO IS A DRAWING NO. 101116-B LABELED "EXHIBIT 'B' " AND BY THIS REFERENCE MADE A PART HEREOF.



DOLVIN LORENZO BUCHANAN, L.S. 9487
EXPIRES 3-31-2025
PROJECT NO.: PRJ-1102562
DRAWING NO.: 101116-B

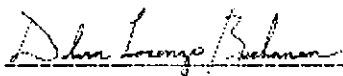


EXHIBIT "A"
LEGAL DESCRIPTION
DRAINAGE EASEMENT – VACATION

ALL OF THAT DRAINAGE EASEMENT LYING WITHIN PARCEL 3 OF PARCEL MAP NO. 21146, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RECORDED JULY 30, 2014, SAID DRAINAGE EASEMENT GRANTED TO THE CITY OF SAN DIEGO PER GRANT DEED RECORDED MAY 29, 1968 AS DOC. NO. 90323, SERIES 9, IN BK. 1968 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY.

CONTAINING 1,182.31 SQ. FT. (0.027 ACRES).

ATTACHED HERETO IS A DRAWING NO. 101116-B LABELED "EXHIBIT 'B' " AND BY THIS REFERENCE MADE A PART HEREOF.



DOLVIN LORENZO BUCHANAN, L.S. 9487
EXPIRES 3-31-2025
PROJECT NO.: PRJ-1102562
DRAWING NO.: 101116-B

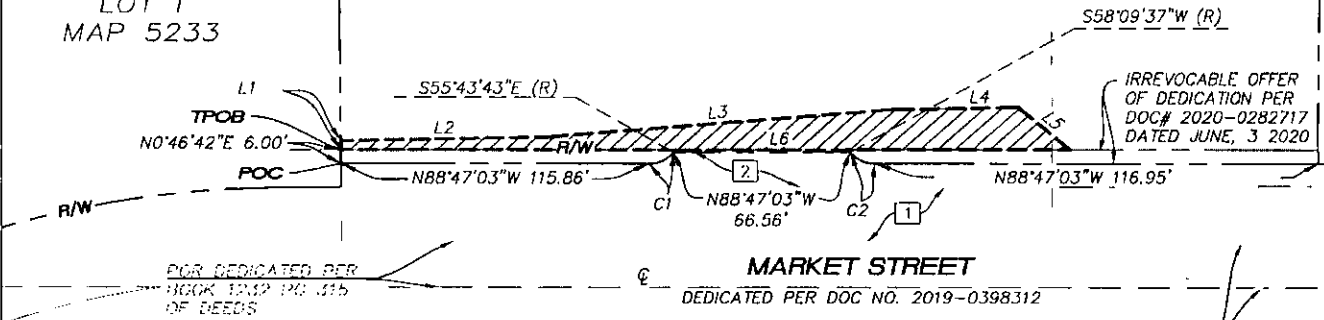


EXHIBIT 'B'

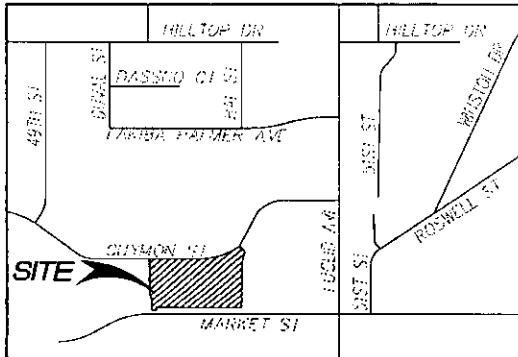
PARCEL 3
PM 21146

PROGRESS
SUBDIVISION
LOT 1
MAP 5233

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	56°56'41"	11.00'	10.93'
C2	56°56'42"	11.00'	10.93'



- 1 PORTION OF MARKET STREET DEDICATED PER MAP 6335
- 2 PORTION OF MARKET STREET DEDICATED PER MAP 21146



VICINITY MAP
NOT TO SCALE

**AC 4C ENGINEERING
+ GEOMATICS**
4960 N HARBOR DR STE 200 (619) 663 8352
SAN DIEGO, CA 92106 www.ac.engineering

LEGEND



SLOPE EASEMENT PER DOC: 2019-0398351
RECORDED SEPT 12, 2019, VACATED
AREA = 2919.81 SQ. FT. (0.067 ACRES)

POC

POINT OF COMMENCEMENT

TPOB

TRUE POINT OF BEGINNING



SUBJECT PROPERTY BOUNDARY LINE

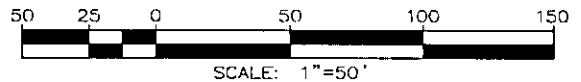
BASIS OF BEARINGS

THE SOUTHERLY LINE OF PARCEL 3 PER PARCEL MAP 21146, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SAID SOUTHERLY LINE SHOWN ON PARCEL MAP 21146 AS "N88°47'03"W"

LINE TABLE		
NO.	LENGTH	BEARING
L1	3.95'	N00° 46' 42"E
L2	77.45'	N89° 57' 49"E
L3	130.54'	N85° 54' 31"E
L4	46.55'	N89° 57' 49"E
L5	27.08'	S45° 01' 21"E
L6	273.48'	N88° 47' 03"W

REFERENCES

PARCEL MAP 21146
MAP 5233
IOD 40430-4-B



Dolvin Lorenzo Buchanan
DOLVIN LORENZO BUCHANAN P.L.S. 9487 DATE

DOCUMENT No. _____
RECORDED _____

SLOPE EASEMENT - VACATION

PER DOC. NO. 2019-0398351, O.R., REC. SEPTEMBER 12, 2019
WITHIN POR. OF PARCEL 3, PARCEL MAP 21146

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	PRJ 1102562
ORIGINAL	MF				SHEET 1 OF 3 SHEETS	I.O. _____
					FOR CITY LAND SURVEYOR _____ DATE _____	1838-6301
						CCS 83 COORDINATES
						198-1741
						NAD 27 COORDINATES
					101116-1-B	B001
					STATUS	

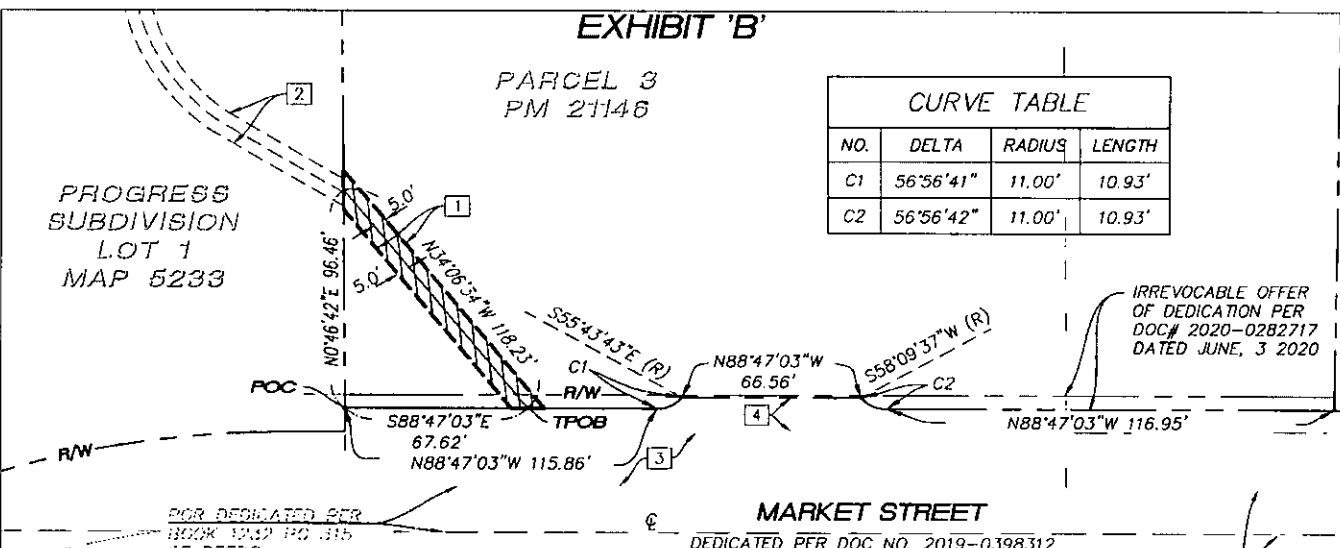
EXHIBIT 'B'

PARCEL 3
PM 21146

PROGRESS
SUBDIVISION
LOT 1
MAP 5233

CURVE TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	56°56'41"	11.00'	10.93'
C2	56°56'42"	11.00'	10.93'

IRREVOCABLE OFFER
OF DEDICATION PER
DOC# 2020-0282717
DATED JUNE, 3 2020



POB DEDICATED PER
BOOK 12417 PG 315
OF DEEDS

MARKET STREET
DEDICATED PER DOC NO. 2019-0398312

- 1 10' DRAINAGE EASEMENT PER DOC: 90323, SERIES 9, BK. 1968
O.R. DATED: MAY 29, 1968
- 2 10' DRAINAGE EASEMENT PER DOC: 29604, BK. 6963 PAGE 315
O.R. DATED: FEBRUARY 24, 1958
- 3 PORTION OF MARKET STREET DEDICATED PER MAP 6335
- 4 PORTION OF MARKET STREET DEDICATED PER MAP 21146

PORTION DEDICATED
PER BOOK 1398,
PAGE 36 DEEDS

LEGEND



DRAINAGE EASEMENT PER DOC. NO. 90323,
SERIES 9, BK. 1968 O.R., REC. MAY 29,
1968, VACATED
AREA = 1182.31 SQ. FT. (0.027 ACRES)

POC

POINT OF COMMENCEMENT

TPOB

TRUE POINT OF BEGINNING



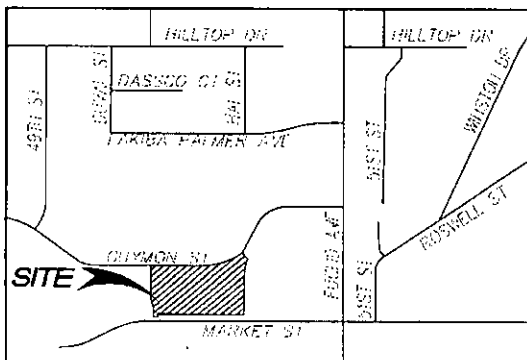
SUBJECT PROPERTY BOUNDARY LINE

BASIS OF BEARINGS

THE SOUTHERLY LINE OF PARCEL 3 PER PARCEL MAP 21146, FILED
IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY,
SAID SOUTHERLY LINE SHOWN ON PARCEL MAP 21146 AS
"N88°47'03"W"

REFERENCES

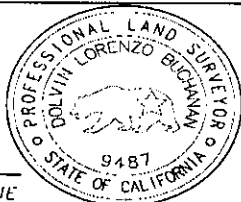
PARCEL MAP 21146
MAP 5233
IOD 40430-4-B



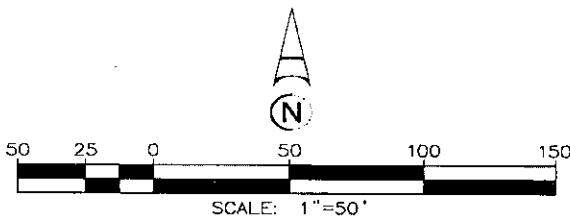
VICINITY MAP
NOT TO SCALE

**AE 4C ENGINEERING
+ GEOMATICS**

4960 N HARBOR DR STE 200 (619) 663 8352
SAN DIEGO, CA 92106 www.4c.engineering



Dolvin Lorenzo Buchanan
DOLVIN LORENZO BUCHANAN P.L.S. 9487 DATE



DOCUMENT No. _____
RECORDED _____

DRAINAGE EASEMENT - VACATION

PER DOC. NO. 90323, SERIES 9, BK. 1968, O.R., REC. MAY 29,
1968, WITHIN PORTION OF PARCEL 3, PARCEL MAP 21146

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA SHEET 2 OF 3 SHEETS	PRJ 1102562
ORIGINAL	MF					
					FOR CITY LAND SURVEYOR	DATE _____
						1838-6301
						CCS 83 COORDINATES
						198-1741
						NAD 27 COORDINATES
					STATUS	101116-2-B
						BO02

Passed by the Council of The City of San Diego on APR 22 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 22 2024.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **315504**