

**ORDER OF VACATION NO. 898a**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND ORDERING THE VACATION OF A PORTION OF 42<sup>ND</sup> STREET, 44<sup>TH</sup> STREET, MACDONALD AVENUE, AND BISSELL AVENUE (File No. ST 1104224)**

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**WHEREAS**, SPI Richmond Associates, LP has submitted an application requesting that a portion 42<sup>nd</sup> Street, 44<sup>th</sup> Street, Macdonald Avenue, and Bissell Avenue be vacated by the City of Richmond; and

**WHEREAS**, pursuant to Street and Highways Code Sections 8320 et. Seq., the City of Richmond desires to vacate a portion of 42<sup>nd</sup> Street, 44<sup>th</sup> Street, Macdonald Avenue, and Bissell Avenue, more particularly described in Exhibits A and B attached hereto and incorporated herein and hereafter referred to as the “area to be vacated,” consisting of a legal description and map of the area; and

**WHEREAS**, the City Engineer has reported to this Council that the area to be vacated is surplus and is not necessary to meet the transportation needs of the City; and

**WHEREAS**, the City is authorized to vacate all or part of a public street or public service easement within the City pursuant to the Public Street, Highways and Service Vacation Easements law (State of California Streets and Highways Code, Section 8300 et. seq.); and

**WHEREAS**, Section 8340 (c) of the State of California Streets and Highways Code requires that unless public convenience and necessity require otherwise, the City must reserve and except from the vacation any easement and right necessary to maintain, operate, replace, remove and renew public utility facilities; and

**WHEREAS**, SPI Richmond Associates and Target have agreed to provide the easements for the required utilities; and

**WHEREAS**, on September 6, 2007, the Planning Commission found that the proposed street vacation satisfied the required findings for a street vacation as set forth by the State of California Streets and Highways Code, and voted unanimously to recommend approval to the City Council; and

**WHEREAS**, the City Clerk administratively set the public hearing for the City Council to consider the proposed vacation for October 16, 2007 pursuant to the Streets and Highways Code Section 8320; and

**WHEREAS**, notice of the hearing on the proposed street vacation as described on Exhibits A and B was duly published and posted as required by Streets and Highways Code Section 8322 and 8323; and,

**WHEREAS**, on October 16, 2007, the City Council opened and conducted the public hearing, allowing all interested parties an opportunity to speak.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND DOES HEREBY RESOLVE AS FOLLOWS:**

1. The City Council finds, based on all the evidence submitted, that portion of 42<sup>nd</sup> Street, 44<sup>th</sup> Street, Macdonald Avenue, and Bissell Avenue described in the legal description and plat map attached hereto, as Exhibits A and B, are not necessary for present or prospective transportation needs and is hereby vacated subject to the following conditions:
  - a. An encroachment permit shall be obtained prior to any work commencing within the public right-of-way. All work within the public right-of-way shall be subject to review and approval by the City Engineer and the Planning and Building Services Director.

- b. The following language shall be added to the legal descriptions of all said street to be vacated, “EXCEPTING AND RESERVING THEREFROM PURSUANT TO THE PROVISIONS OF SECTION 8340 of the Street and Highways Code and for the benefit of Pacific Bell Telephone Company dba AT&T California (“AT&T”), the permanent easement and the right at any time or from time to time to construct maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cable, wires, poles and other convenient structures, equipment and fixtures for the operation of telegraphic and telephone lines and other communication facilities, including access and the right to keep the property free from inflammable materials and wood growth, and otherwise protect the same from all hazards, in, upon, over and across that portion of 42<sup>nd</sup> Street, 44<sup>th</sup> Street, Macdonald Avenue, and Bissell Avenue or parts thereof”, prior to recordation, unless otherwise approved by AT&T.”
2. The City Clerk is hereby directed to record this order declaring vacation of the portion of 42<sup>nd</sup> Street, 44<sup>th</sup> Street, Macdonald Avenue, and Bissell Avenue described in Exhibits A and B in the Office of the Contra Costa County Recorder only after conditions required by the City Council have been satisfied.

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I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond, California, at a regular meeting thereof held October 16, 2007, by the following vote:

AYES: Councilmembers Butt, Marquez, Rogers, Sandhu, Thurmond, and Mayor McLaughlin

NOES: None

ABSENT: Councilmember Bates, Lopez, and Viramontes

ABSTAIN: None

DIANE HOLMES  
Clerk of the City of Richmond

(SEAL)

APPROVED:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

LOUISE RENNE, Interim  
City Attorney

State of California            }  
County of Contra Costa       : ss.  
City of Richmond             }

I certify that the foregoing is a true copy of Resolution of Vacation 898a, finally passed and adopted by the Council of the City of Richmond at a meeting held on October 16, 2007.