City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	1D
COUNCIL MEETING	1/8/08
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

January 8, 2008

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, Assistant Director/Interim City Engineer
Public Works Department, Engineering Division

SUBJECT: APPROVE THE ACQUISITION OF A STREET EASEMENT AT THE SOUTHWEST CORNER OF NORTH PLEASANT AND WEST GARLAND AVENUES TO PERMIT THE WIDENING OF NORTH PLEASANT UNDER THE NO NEIGHBORHOOD LEFT BEHIND PROGRAM (NNLB) (PROPERTY LOCATED IN COUNCIL DISTRICT 1)

Presented to City Council
Date 1/8/08
Disposition rec. approved

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends that the City Council approve the acquisition of a 4,846 square foot easement from a vacant parcel at the southwest corner of North Pleasant and West Garland Avenues from Donna Rodriguez, Trustee of the Horace I. White 1995 Trust, for the appraised value of $19,380. This project is part of the No Neighborhood Left Behind (NNLB) program.

EXECUTIVE SUMMARY

North Pleasant Avenue, approximately two blocks south of West Dakota at West Garland, has only a 30 foot right-of-way for a distance of approximately 161 feet. The standard minimum street right-of-way in the City of Fresno is 60 feet. The vacant parcel at the southwest corner of North Pleasant and West Garland Avenues contains 4.15 acres, and its intrusion into the Pleasant right-of-way creates a non-standard narrowing of the street that affects both north and southbound traffic. A 30 foot wide easement on the easterly end of this property has been appraised at $19,380, and the owner, Donna Rodriguez, Trustee of the Horace L. White 1995 Trust, has agreed to sell it to the City at this price. The easement is illustrated on the attached Exhibit A.

KEY OBJECTIVE BALANCE

Customer Satisfaction is achieved through eliminating a bottleneck street condition in this neighborhood southeast of Dakota and Marks. Employee Satisfaction is derived from concluding successful negotiations with the property owner, and the goal of Financial Management is achieved through acquiring the subject easement at the appraised fair-market value.

*SUBJECT TO MAYOR'S VETO

BACKGROUND

In 2004 the Council approved the No Neighborhood Left Behind (NNLB) program to address infrastructure deficiencies in older neighborhoods. As these deficiencies are identified, plans are developed to make improvements through NNLB construction projects.

The acquisition of a 30 foot wide street easement on the vacant property at the southwest corner of Pleasant and Garland will permit the NNLB program to widen Pleasant from a half-street width to a normal 60 foot wide local street and eliminate a serious bottleneck.

The Trustee of the Horace L. White 1995 Trust has signed the necessary documents to convey the easement to the City. The City Attorney's Office has reviewed these documents, and approved them as to form. A Finding of Conformity with the City's Master Environmental Impact Report (MEIR) No. 10130 has been made (EA-PW-2007-Pleasant Dedication), noting that the proposed project is consistent with the 2025 Fresno General Plan and the Fresno High Community Plan.

FISCAL IMPACT

This project is funded by the No Neighborhood Left Behind program. Funding for the purchase of the subject easement is available in Public Works NNLB Project PW00290.

PNW/SLM/NLH/eam
Apprv Acq to Str Esmnt SW Cor N Pleasant-W Garland Ave NNLB 1-8-08

Attachment: Exhibit "A"

EXHIBIT "A"

APN 433-210-15 | APN 433-210-14

30.00'

W. GARLAND AVE. 30' 30' ①

NORTH LINE OF LOT 43, PERRIN COLONY NO. 6

30.00'

APN 433-080-02

(161.53' CALC.) (161.53' CALC.) (126.13') ③

30.00'

SOUTH LINE OF THE NORTH 1/4 OF LOT 43, PERRIN COLONY NO. 6

30.00' ②

LOT 43
PERRIN COLONY NO. 6
RECORD OF SURVEYS BOOK 1, PAGE 2, F.C.R.

APN 433-080-10

(484.60' CALC.) N. PLEASANT AVE. (260.00') (N 0°01'00" E, 646.13') (260.00')

30.00'

NORTHEAST CORNER LOT 43

APN 433-251-01: 33 | 32

W. GARLAND AVE.

EAST LINE OF LOT 43, PERRIN COLONY NO. 6

(30.00')

APN 433-253-01: 34 | 35

TRACT NO. 1630
MOON GLO PARK
PLAT BK. 19, PG. 83, F.C.R.

63 | 62

W. FEDORA AVE.

③

64 | 65

93 | 92

(30.00')

W. DAYTON AVE.

SOUTHEAST CORNER LOT 43

( ) = DATA AS PER MAP OF TRACT NO. 1630, MOON GLO PARK, BOOK 19 OF PLATS AT PAGE 83, FRESNO COUNTY RECORDS

① = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED APRIL 25, 1961 IN BOOK 4545 AT PAGE 644, O.R.F.C.

② = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY AN INSTRUMENT RECORDED OCTOBER 25, 1972 IN BOOK 6084 AT PAGE 198, O.R.F.C.

③ = PREVIOUSLY DEDICATED BY THE MAP OF TRACT NO. 1630, MOON GLO PARK, BOOK 19 OF PLATS AT PAGE 83, FRESNO COUNTY RECORDS

INDICATES AREA TO BE DEDICATED
4,846 S.F. ±

D:\DATA\NNLB Deeds\APN 433-080-02.dcd

REF.& REV. 2007-130 PLAT 2050	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PW00290 FUND NO. 30129 ORG. NO. 189901	KRA 0103012000 RES TYPE N100
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY A.J CH. BY D.H.C. DATE AUG. 28, 2007 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8336

1-8-08
1.D

AGREEMENT FOR PURCHASE AND SALE OF EASEMENT

CITY OF FRESNO
City Clerk's Office (Original)

ON REAL PROPERTY AND ESCROW INSTRUCTIONS

Pleasant & Garland NNLB 100

DONNA RODRIGUEZ, as Successor Trustee of the HORACE L. WHITE 1995 TRUST, hereinafter called the "Seller," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described easement on real property on the following terms and conditions:

1. The real property easement which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject easement," is an easement and right-of-way for public street purposes, situated in the County of Fresno, State of California, more particularly described as follows:

EXHIBITS A & B, attached hereto and by reference incorporated herein.

2. The purchase price for the subject easement shall be the sum of NINETEEN THOUSAND THREE HUNDRED EIGHTY and 00/100 DOLLARS ($19,380.00) as just compensation therefor.

3. Seller acknowledges that the City has the power to acquire the subject easement for public purposes by eminent domain. The parties therefore agree and stipulate as follows:

a. City and Seller stipulate that this Agreement and the sum payable hereunder is full consideration of any claims of damage or compensation that may have arisen by such eminent domain action or the public project for which Seller conveys the subject easement. The purchase price shown in Paragraph 2, payable to Seller, includes all compensation to which Seller would be entitled under Chapter 9 of the California Eminent Domain Law (Code of Civil Procedure Sections 1263.010, and following) or otherwise connected with or arising out of the following: (1) City's acquisition of the subject easement, and (2) any pre-condemnation or pre-acquisition activities of City (and any officer, agent, contractor, attorney, or employee of City).

b. However, if possession or title does not pass to the City within the time provided by this Agreement, the City may pursue eminent domain proceedings to acquire such possession or title. This Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Seller. Seller waives all other defenses in said proceeding.

This stipulation will survive the closing of escrow referenced in Paragraph 6 and any expiration or termination of this Agreement.

4. It is agreed and confirmed by the City and the Seller that notwithstanding other provisions in this Agreement, the right of possession and use of the subject easement by the City, including the right to remove and dispose of improvements within the subject easement, shall commence on the close of escrow controlling this transaction, and the amount shown in paragraph 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

5. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject easement free and clear of all liens, encumbrances, and restrictions of record except for the title exceptions noted in 6.b below.

6. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 8050 N. Palm Ave., Suite 101, Fresno, CA 93711 ("escrow holder"). Said escrow shall be opened upon the following terms and conditions, and the Seller and City, by their signatures to this Agreement, make this paragraph their escrow instructions:

a. The City shall deposit the sums specified in Paragraph 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefor.

b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Seller only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded deed to the subject easement and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said easement in the City free and clear of all liens, encumbrances, and restrictions of record, except for:

Items 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Preliminary Report No. 07-278088-GW, dated August 20, 2007.

c. Property taxes for the current fiscal year, as they apply to the subject easement, if any, shall be prorated to close of escrow. It is understood that Seller shall be responsible for the payment of all unpaid taxes, penalties, redemptions, and costs allocable to the subject easement for all periods prior to close of escrow. Refund shall be made to Seller out of escrow, for taxes previously paid by Seller which are allocable to the part of the current fiscal year subsequent to the close of escrow.

d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City.

e. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

f. It is agreed that Seller may, on or before the date possession of said real property is delivered to the City, remove from said easement and retain as Seller's property the following described improvements: None.

7. Miscellaneous Provisions:

a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

d. Severability. The provisions of this Agreement are severable. The invalidity, or unforceability or any one provision in this Agreement shall not affect the other provisions.

e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.

j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Seller.

8. Time is of the essence of each and every term, condition, and covenant hereof.

9. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred eighty (180) days from the date hereof, and that upon the Council's approval and its duly authorized execution within said time by the City, this Agreement shall become

a contract for the purchase and sale of the subject easement binding upon Seller and City, their heirs, executors, administrators, successors in interest, and assigns.

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: Stacie L. Melikian 12/5/07
Deputy Stacie L. Melikian

RECOMMENDED FOR APPROVAL

By: Neil Hansen
Neil Hansen
Senior Real Estate Agent

SELLER:

HORACE L. WHITE 1995 TRUST

By: Donna Rodriguez
Donna Rodriguez, Successor Trustee
Successor Trustee

Date 11/8/07

Address:

8788 Continental Dr.
Riverside, CA 92504

This Agreement is executed by the City of Fresno by and through the Public Works Director of said City pursuant to authority granted by the Council of the City of Fresno on Jan. 8, 2008.

ATTEST:

REBECCA E. KLISCH
City Clerk

By: Edora Sommerville
Deputy 1/28/08

CITY OF FRESNO

By: Scott L. Mozier
~~For~~ Patrick Wiemiller
Public Works Director

Date: 1/17/08

Address of City:
2600 Fresno St., Room 4019
Fresno, CA 93721

APN 433-080-02

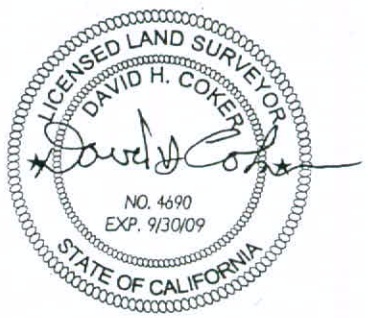
NNLB100.agree

EXHIBIT "A"

APN 433-080-02 (portion)
Street easement

The east 30.00 feet of the north 1/4 of Lot 43 of Perrin Colony No. 6, according to the map thereof recorded in Book 1 of Record of Surveys at Page 2, Fresno County Records.

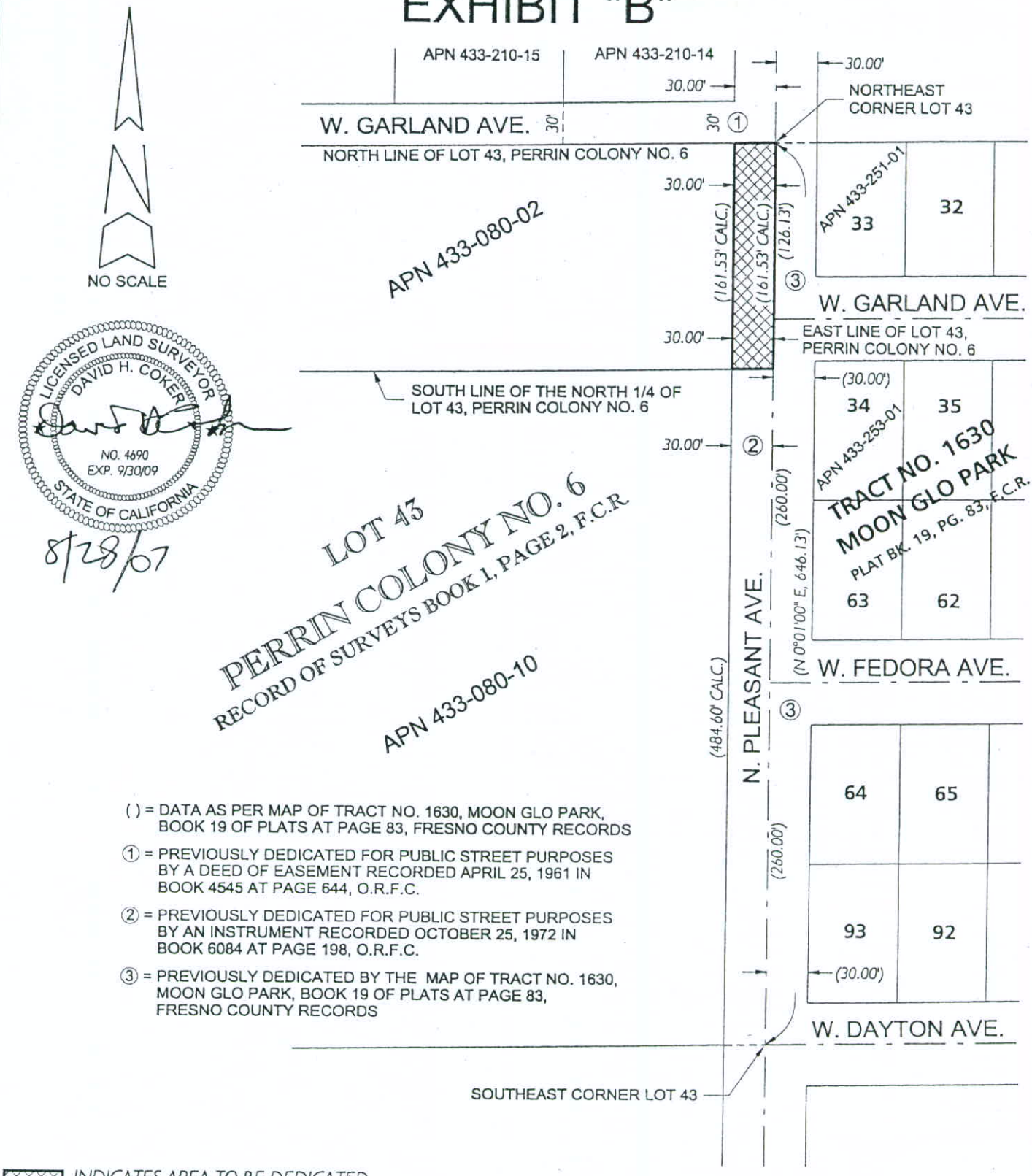
Contains an area of 4,846 square feet, more or less.



8/28/07

2007-130
15-A-8336
D:\DATA\NNLB Deeds\APN 433-080-02.doc

EXHIBIT "B"



NO SCALE

LICENSED LAND SURVEYOR
DAVID H. COKER
NO. 4690
EXP. 9/30/09
STATE OF CALIFORNIA

8/28/07

( ) = DATA AS PER MAP OF TRACT NO. 1630, MOON GLO PARK, BOOK 19 OF PLATS AT PAGE 83, FRESNO COUNTY RECORDS

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INDICATES AREA TO BE DEDICATED
4,846 S.F.±

REF.& REV. 2007-130 PLAT 2050	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	PROJ. ID. PW00290 KRA 0103012000 FUND NO. 30129 RES TYPE N100 ORG. NO. 189901 DR. BY A.J CH. BY D.H.C. DATE AUG. 28, 2007 SCALE NO SCALE SHEET NO. 1 OF 1 SHEETS 15-A-8336

January 8, 2008

Council Adoption: 1/8/08
Mayor Approval:
Mayor Veto:
Override Request:

RECEIVED
2008 JAN 16 PM 3:04
CITY CLERK, FRESNO CA

TO: MAYOR ALAN AUTRY

FROM: REBECCA E. KLISCH, CMC RRK
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 1/08/08, Council took legislative action entitled **Appv acquisition of street easement, s/w corner N. Pleasant/W. Garland, re: NNLB program**, Item No. **1D,** by the following vote:

Ayes	:	Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong
Noes	:	None
Absent	:	Perea
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before January 18, 2008. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED:

~~**VETOED** for~~ the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

Alan Autry, Mayor

Date: 1/16/08

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	