

NOTICE OF SPECIAL MEETING

TO THE MEMBERS OF THE CITY COUNCIL OF THE CITY OF AUSTIN:

Notice is hereby given that a Special Meeting of the City Council of the City of Austin will be held on the 23rd day of June, 1959, at the Municipal Building, Eighth and Colorado, in Austin, Texas, at 10:00 A.M. for the purpose of discussing and passing an ordinance perpetually vacating and closing the portion of East 9th Street between Trinity and Neches Streets.

(Sgd) Elsie Woosley
City Clerk

(Sgd) Tom Miller
Mayor
City of Austin, Texas

ATTEST:

(Sgd) Elsie Woosley
City Clerk

CONSENT TO MEETING

We, the undersigned members of the City Council, hereby accept service of the foregoing notice, waiving any and all irregularities in such service and such notice, and consent and agree that said City Council shall meet at the time and place therein named, and for the purpose therein stated.

(Sgd) Edgar Perry III

(Sgd) Lester E. Palmer

(Sgd) Hub Bechtol

(Sgd) Ben White

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting

June 23, 1959

10:00 A.M.

Council Chamber, City Hall

The meeting was called to order with Mayor Miller presiding.

Roll call:

Present: Councilmen Bechtol, Palmer, Perry, White, Mayor Miller
Absent: None

Present also: W. T. Williams, Jr., City Manager; Doren R. Eskew, City Attorney; Reuben Rountree, Jr., Director of Public Works; Robert A. Miles, Chief of Police.

The Mayor announced that this Special Meeting was called for the purpose of discussing and passing an ordinance perpetually vacating and closing the portion of East 9th Street between Trinity and Neches Streets.

The Mayor read the entire ordinance.

MR. JOHN COFER asked for copies of this ordinance, a copy of the ordinance vacating the public square; also copy of the City Attorney's opinion, if any had been filed. Councilman White asked the City Attorney to read the opinion which he had asked for.

The City Attorney read the following opinion:

"June 23, 1959

"Councilman Ben White
Austin, Texas

"Dear Sir:

"On June 16, 1959, you requested that the City Council be given my opinion as to the legality of an ordinance previously prepared which has not been introduced. Since that time another ordinance has been prepared at the request of four members of the Council and a copy was furnished each member. Upon receipt of your copy thereof on June 22, 1959, you renewed your request for my opinion concerning the ordinance which you received that day. This opinion is confined to the ordinance you received June 22, 1959.

"The governing body of the City has authority, subject to some limitations,

to determine the necessity for vacating a street, and where it has not abused its discretion in vacating a street, its action will not be inquired into by the courts. Although stated differently by different courts, an excellent summary of the nature of the property interest and the relationship of the City thereto is found in the case of Texas Co. v. Texarkana Machine Shop, 1 SW 2d 928:

"Streets are not owned by the public, but their uses are public. The City as a municipal corporation, holds merely the right to the easement in such streets in trust for the public and in respect to the public interests. Therefore, the authority of the city to vacate a street may be regarded as attaching at all only in case it is for the benefit of the public that such action should be taken. The benefit may be either in relieving the public from the charge of maintaining a street that is no longer used by the public, or is no longer useful or convenient to the public, or by laying out a new street in the place which will be more useful and convenient to the public in general. A street may not in any event be vacated or discontinued for the purpose of devoting it to purely private and inconsistent uses"

"Of course, some incidental private benefits almost always result from the enactment of an ordinance vacating a street. The mere existence of an incidental private benefit does not make the ordinance invalid.

"The ordinance in question contains the recitals of findings of facts by the City Council of benefits to the public at large which legally sustain the enactment of the ordinance and I, therefore, approve the same.

"Respectfully submitted,
(Sgd) Doren R. Eskew
Doren R. Eskew
City Attorney"

Copies had been sent to the Council Members and Mayor.

Mayor Miller introduced the following ordinance:

AN ORDINANCE PERPETUALLY VACATING AND CLOSING THE PORTION OF ASH STREET, NOW KNOWN AS EAST 9TH STREET, LYING BETWEEN THE EAST LINE OF TRINITY STREET AND THE WEST LINE OF NECHES STREET, PLAN OF THE CITY OF AUSTIN, FOR PURPOSES OF PUBLIC TRAVEL; RETAINING UTILITY EASEMENTS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

Councilman White made the following statement:

"Before I vote I would like to read a statement that I have for the general public. I realize that in some instances the City Council does not follow the recommendations of the Department Heads of the City. In many matters, however, we do need the

technical and professional advice of our Department Heads who keep alert on our needs and plan for the provision of facilities necessary for the City's growth and welfare.

"In this particular instance, I have discussed this matter with MR. WILLIAMS, our City Manager; MR. ROUNTREE, the Director of Public Works; MR. OSBORNE, the Director of Planning, and with MR. KLAPPROTH, the Traffic Engineer. Each, in his specialized field of service, has advised me that it would be unwise to vacate East 9th Street between Trinity and Neches Streets. These recommendations were made by them on the basis of observations and a number of studies relative to traffic distribution and circulation in the Central Area, some of them initiated six or more years ago.

"We have so few east-west through streets in the Central Area. When the Capitol expansion program is completed, we will have only one east-west through street, from 11th to 19th Street, and that is 15th Street, already overloaded with traffic. Ninth Street has long been an important segment of the Central Area one-way plan, to be extended from the Expressway to Lamar Boulevard, when required. There is a definite need for East 9th Street between Trinity and Neches Streets. This need will become more acute in the near future to take care of ever increasing traffic.

"When voting on matters such as this, it is paramount that I keep before me the needs of some 200,000 citizens who are depending upon me for representation. The decisions which I make, come from my heart. After diligent personal study and having evaluated all of the information supplied by respective departments and in hearings on this matter, I must vote against this ordinance, and I vote 'No'."

The ordinance was read the first time and Councilman Palmer moved that the rule be suspended and the ordinance passed to its second reading. The motion, seconded by Councilman Perry, carried by the following vote:

Ayes: Councilmen Bechtol, Palmer, Perry, Mayor Miller
Noes: Councilman White

The ordinance was read the second time and Councilman Palmer moved that the rule be suspended and the ordinance passed to its third reading. The motion, seconded by Councilman Perry, carried by the following vote:

Ayes: Councilmen Bechtol, Palmer, Perry, Mayor Miller
Noes: Councilman White

The ordinance was read the third time and Councilman Palmer moved that the ordinance be finally passed. The motion, seconded by Councilman Perry, carried by the following vote:

Ayes: Councilmen Bechtol, Palmer, Perry, Mayor Miller
Noes: Councilman White

On the third reading of the Ordinance, Councilman Palmer made the following statement concerning his vote:

"I would like to make a statement on this final reading. I have

been all over the area and looked at it many, many times. The Street has been closed for all practical purposes for thirty long years, and I believe that the nature of the terrain, and the inaccessibility to the Interstate Highway would make it so costly, that I personally do not think it to be in the public interest to open the street."

Councilman Perry made the following statement concerning his vote:

"I would like to make a public statement. I have been asked by more than one property owner, not necessarily all property owners in the 9th Street area, to disqualify myself on this issue primarily because I am a Baptist. I would have more reason to disqualify myself on the other side of the issue because my family and I own more property in the area from Congress Avenue to Trinity, from 7th Street to 11th Street than any person who is taking issue against the closing of 9th Street. We own more property that would be enhanced by the permanent opening of 9th Street than any one who is represented in this case. I cannot allow my personal, selfish interest to influence me in voting in behalf of the citizens of Austin. Because of the tremendous cost that would be involved in opening 9th Street, and the little good it would do traffic-wise, I can believe only that the best interests of all the citizens of Austin are served by not going to this expense, and I vote 'aye'."

The Mayor announced that the ordinance perpetually vacating and closing a portion of East 9th Street, between Trinity Street and Neches Street had been passed by a 4 to 1 vote.

MRS. JOHN BARROW made a statement in protest of the Council's action.

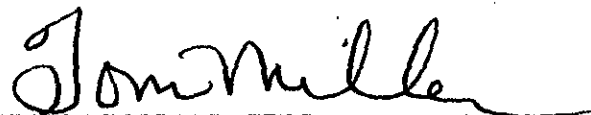
MR. JAY PATTERSON thanked the Council for its kind attention to this matter.

There being no further business, Councilman Palmer moved that the Council adjourn. The motion, seconded by Councilman Bechtol, carried by the following vote:

Ayes: Councilmen Bechtol, Palmer, Perry, White, Mayor Miller
Noes: None

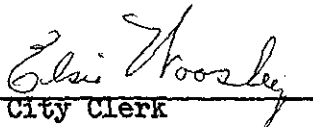
The Council adjourned at 11:00 A.M. subject to the call of the Mayor

APPROVED



Mayor

ATTEST:


City Clerk