

00-0-0970

(Do Not Write Above This Line)

AN ORDINANCE

BY COUNCILMEMBER DEBI STARNES

ABANDONING PORTIONS OF THE UPPER LEVEL OF ALABAMA STREET, S.W.; AUTHORIZING EXECUTION OF A QUITCLAIM DEED TO THE DOWNTOWN DEVELOPMENT AUTHORITY UPON SATISFACTION OF CERTAIN CONDITIONS; AND FOR OTHER PURPOSES.

ADOPTED BY  
AUG 0 7 2000

COUNCIL

As Amended

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 6/19/00

Referred To: City Utilities

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred to \_\_\_\_\_

Committee City Utilities  
 Date 6-27-00  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

Committee City Utilities  
 Date 8/7/00  
 Chair Alan Anderson  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members As Amended  
Debi Starnes  
William Starnes  
John McLeary  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

FINAL COUNCIL ACTION

- 2nd Reading
- 1st & 2nd Reading
- 3rd Reading
- Consent
- V Vote
- RC Vote

CERTIFIED

**CERTIFIED**  
 AUG 7 2000  
 ATLANTA CITY COUNCIL PRESIDENT  
*Robert Johnson*

**CERTIFIED**  
 AUG 0 7 2000  
*Robert Johnson*  
 MUNICIPAL CLERK

MAYOR'S ACTION

**APPROVED**  
 AUG 13 2000  
*Robert Johnson*

AN ORDINANCE

BY COUNCILMEMBER DEBI STARNES

ABANDONING PORTIONS OF THE UPPER LEVEL OF ALABAMA STREET, S.W.; AUTHORIZING EXECUTION OF A QUITCLAIM DEED TO THE DOWNTOWN DEVELOPMENT AUTHORITY UPON SATISFACTION OF CERTAIN CONDITIONS; AND FOR OTHER PURPOSES.

WHEREAS, the City and the Downtown Development Authority (“DDA”) hold ownership and leasehold interests in the project known as Underground Atlanta (“Underground”), including the property abutting the upper level of Alabama Street, S.W. (“Upper Alabama Street); and

WHEREAS, the City of Atlanta has adopted policies favoring the development of mixed uses of property, especially property near transit, and of downtown housing, particularly fee simple residences; and

WHEREAS, the City receives certain rental income from the sublease to CV Underground LLC (the “Sublease”) of certain commercial spaces at Underground; and

WHEREAS, the City also receives sales tax revenue from commercial activity at Underground; revenue from the parking decks at Underground; and property tax revenue with respect to the property subject to the Sublease; and

WHEREAS, the City is obligated pursuant to certain documents (the “City Bond Contracts”) to make certain payments to or on behalf of DDA with respect to certain revenue bonds issued by DDA with respect to Underground; and

WHEREAS, for these reasons it is in the financial interest of the City and DDA to maximize the revenue potential of Underground Atlanta; and

WHEREAS, the Upper Alabama Street area has had lower sales and revenues than the Lower Alabama area throughout the history of Underground; and

WHEREAS, the enclosure of Upper Alabama Street into a conditioned shopping and entertainment environment and the development of residences above the street would enhance the Underground experience, generate increased retail traffic, and otherwise contribute to the development of a “24-hour city;” and

WHEREAS, development of housing at Underground, which already provides shopping and entertainment, would advance the City’s goals of fostering the development of mixed uses, downtown housing and mixed uses near transit; and



WHEREAS, such a development is projected to provide at least \$1,500,000 in new infrastructure investment in Underground and to produce in excess of \$1,000,000 annually in new revenues to the City; and

WHEREAS, by an ordinance adopted by the Council on March 17, 1975 and approved by the Mayor on March 25, 1975, the City authorized abandonment of the portion of Alabama Street in the Underground area for a park and specified that the abandonment would become effective upon satisfaction of certain conditions and adoption of a subsequent resolution, but said resolution was never adopted; and

WHEREAS, by an ordinance adopted by the Council on August 3, 1986 and approved by the Mayor on August 10, 1986, the City closed to vehicular traffic Upper Alabama Street between Peachtree Street and Central Avenue and converted this segment into a pedestrian mall; and

WHEREAS, by a resolution adopted by the Board of the DDA on April 28, 2000, the DDA adopted a policy to promote, encourage, and facilitate the development of fee simple residences above the right-of-way of Upper Alabama Street and authorized the President of DDA or his designee to petition the City for abandonment of portions of Upper Alabama Street to DDA subject to certain conditions; and

WHEREAS, DDA has submitted a petition for abandonment in accordance with the procedures set forth in Section 138-5(a) of the Code of Ordinances, and the Commissioner of Public Works has determined that the street in question is no longer necessary as a public right-of-way and may be abandoned to DDA; and

WHEREAS, notice of the abandonment petition has been duly advertised in accordance with applicable City requirements; and

WHEREAS, the Council wishes to abandon Upper Alabama Street and authorize the execution of a quitclaim deed to the DDA upon satisfaction of certain conditions.

**NOW, THEREFORE, BE ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:**

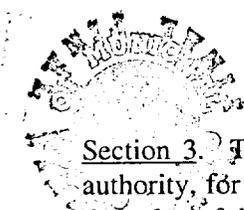
Section 1. Pursuant to applicable provisions of the laws of the State of Georgia and the Code of Ordinances of the City of Atlanta, and in accordance with the provisions of this ordinance, such portions of the upper level of Alabama Street S.W. and the sidewalks adjacent thereto, all as described in Exhibit A attached hereto and incorporated herein by reference, together with all existing appurtenant supports for the Upper Alabama viaduct are declared, determined, and certified to be no longer useful or necessary for the use and convenience of the public and are hereby abandoned.

Section 2. The purchasing agent is authorized to convey the aforesaid abandoned property to the Downtown Development Authority ("DDA"), and the Mayor is



authorized to execute a quitclaim deed to the DDA, upon satisfaction of the following conditions:

- a) DDA enters into an agreement to convey certain air and support rights within the abandoned Upper Alabama Street right-of-way to a private developer for construction of fee simple residences;
- b) DDA and the developer enter into an agreement for the development of fee simple residences to be constructed in said air rights;
- c) The developer and/or CV Underground LLC ("CV"), the sublessee of Underground, enter into an agreement with DDA to invest a minimum of \$1,500,000 in infrastructure improvements to Underground Atlanta in the form of enclosure of the Upper Alabama Street area, climate control of the Upper Alabama area, and construction of additional escalator connections to the Lower Alabama Street area;
- d) DDA and the developer enter into an agreement pursuant to which the developer shall agree to develop 20 percent of such fee simple residences as affordable housing under the affordability standards applied by the Urban Residential Finance Authority, but only if such residential development shall be designated as an enterprise zone by the City prior to November 1, 2000;
- e) CV, DDA, and the City enter into such easements, licenses, and other agreements with the developer as are required to grant necessary support, access, and usage rights to the developer for construction and use of fee simple residences in the air rights, and for use by the owners of such residences and their guests, under appropriate lease or license documentation, of up to 300 parking spaces, at market rates, located within the City-owned parking decks adjacent to Underground;
- f) CV, DDA, and the City enter into an amendment to the Sublease to incorporate the newly enclosed Upper Alabama Street area into the Sublease so that any enhanced revenues will inure to the benefit of the City as provided in the Sublease; and
- g) DDA grants to the City a repurchase option on the remaining interest of the DDA in the Upper Alabama Street area mirroring the existing repurchase option of the City with respect to the remaining interests of DDA in Underground as provided in the City Bond Contracts;
- h) **The City and the developer enter into an agreement whereby the developer agrees to maintain the Upper Alabama Street viaduct between the eastern right-of-way of Central Avenue and the western right-of-way of Peachtree Street (the "maintenance area") and the City agrees to reimburse the developer for the cost of repairing, replacing, or improving the portions of the maintenance area that are not abandoned under this ordinance; and**
- i) **The City and the developer and/or CV enter into an agreement whereby the developer and/or CV agrees to maintain the decorative brick pavers installed in the intersections of Upper Alabama Street with Peachtree Street, Pryor Street, and Central Avenue, and the City agrees to reimburse the developer and/or CV for the cost of said maintenance.**



Section 3. The Council finds that abandonment of Upper Alabama Street to DDA, its development authority, for redevelopment purposes is in the best interest of the City. The Council further finds that the value of the infrastructure improvements required in Section 2(c) and the projected increase in rental, sales tax, and property tax revenues to be received from the development project exceed the fair market value of the abandoned right-of-way, and accordingly waives the requirements of paragraphs (c) and (d) of Code Section 2-1578 (appraisal and negotiation) and paragraph (f) of Code Section 138-5 (payment of proceeds into specified account).

Section 4. The Council finds that DDA and the City are the only abutting property owners at issue, and accordingly waives the provisions of paragraph (b)(1) of Code Section 138-5 (notice to abutting property owners).

Section 5. The Mayor is authorized to execute such licenses, contracts and other documents including, without limitation, deeds, leases, easements or licenses, as may be necessary in order to provide for the use of up to 300 parking spaces in the Underground parking decks (such parking decks are defined in the Sublease as the "Parking Facilities") for the use and benefit (on a twenty-four hours per day and a seven days per week basis) of owners (and their families, guests and invitees) of the fee simple residences to be constructed above Upper Alabama Street as herein contemplated. Such documents shall further provide that the use of such parking spaces by such owners of such fee simple residences shall be for such monthly parking rates as are generally prevailing in the surrounding area and shall further provide that the use of such parking spaces by such owners (and their families, guests and invitees) of such fee simple residences shall be on a non-exclusive basis. The term of such documents shall be for so long as the Parking Facilities are operated as parking facilities, but in no event shall the term exceed fifty years with a right of renewal not to exceed fifty years, as authorized by applicable Georgia law.

Section 6. The Mayor is authorized to execute any instruments of conveyance, agreements, easements, licenses and other documentation necessary or appropriate to accomplish the abandonment and conveyance to DDA, the transactions described in Section 3, and the construction and use of the fee simple residences, as contemplated herein.

Section 7. No agreement or license authorized by this ordinance shall be binding on the City, nor shall the City be liable thereunder, until said agreements and licenses are executed by the Mayor and delivered to the contracting parties.

**Section 8. Any and all reservations for existing public or private utility easements shall remain in effect for the purpose of entering the property to operate, maintain, or replace said utility facilities. These easements shall remain in effect until such time that said utilities are abandoned, removed, or relocated, at which time said easements shall expire.**

Section 9. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of any such conflict.

OMC- Amendment Incorporated by tcp 8/16/00

A true copy,

  
Rhonda Daughkin Johnson  
Municipal Clerk, CMC

ADOPTED as amended by the Council  
APPROVED by the Mayor

AUG 07, 2000  
AUG 13, 2000

EXHIBIT A  
TO ORDINANCE ABANDONING  
A PORTION OF UPPER ALABAMA STREET

## Legal Description

### Tract "A"

All that air space located both over and above a horizontal plane elevation of 1041.5 based on the National Geodetic Vertical Datum of 1929 (NGVD29) and within the boundary of that tract lying and being in Land Lot 77 of the 14<sup>th</sup> District, City of Atlanta, Fulton County, Georgia more particularly described as follows:

Begin at a point located at the intersection of the northwesterly right-of-way of Pryor Street (60-foot right-of-way) and the southwesterly right-of-way of Alabama Street (60-foot right-of-way) (N 1365071.46, E 2228630.74 Georgia State Plane Coordinate System West Zone); thence along said southwesterly right-of-way of Alabama Street N 56° 36' 31" W, 266.68 feet to a point lying at the northeasterly corner of that property known as the "Hotel Property" as shown on the hereinafter described Survey; thence leaving said southwesterly right-of-way N 33° 23' 29" E, 60.0 feet to a point lying on the northeasterly right-of-way of Alabama Street; thence along said northeasterly right-of-way of Alabama Street S 56° 36' 31" E, 266.68 feet to a point lying at the intersection of the northeasterly right-of-way of Alabama Street and the northwesterly right-of-way of Pryor Street; thence S 33° 23' 29" W, 60.00 feet to the Point of Beginning.

Said Tract "A" contains 16,001 square feet or 0.3673 acres more or less.

Together with all existing appurtenant supports and footings for the Upper Alabama viaduct.

The foregoing property being a portion of the property described in that certain Survey dated May 15, 2000 and prepared by DLM Civil Engineering & Land Surveying, Inc. for Aderhold Properties, Inc.

## Legal Description

### Tract "B"

All that air space located both over and above a horizontal plane elevation of 1041.5 based on the National Geodetic Vertical Datum of 1929 (NGVD29) and within the boundary of that tract lying and being in Land Lot 77 of the 14<sup>th</sup> District, City of Atlanta, Fulton County, Georgia more particularly described as follows:

Begin at a point located at the intersection of the northwesterly right-of-way of Central Avenue (60-foot right-of-way) and the southwesterly right-of-way of Alabama Street (60-foot right-of-way) (N 1364853.67, E 2228961.14 Georgia State Plane Coordinate System West Zone); thence along said southwesterly right-of-way of Alabama Street N 56° 36' 31" W, 264.79 feet; thence leaving said southwesterly right-of-way N 33° 23' 29" E, 60.00 feet to a point lying on the northeasterly right-of-way of Alabama Street; thence along said northeasterly right-of-way of Alabama Street S 56° 36' 31" E, 264.79 feet to a point lying at the intersection of the northeasterly right-of-way of Alabama Street and the northwesterly right-of-way of Central Avenue; thence S 33° 23' 29" W, 60.00 feet to the Point of Beginning.

Said Tract "B" contains 15,887 square feet or 0.3647 acres more or less.

Together with all existing appurtenant supports and footings for the Upper Alabama viaduct.

The foregoing property being a portion of the property described in that certain Survey dated May 15, 2000 and prepared by DLM Civil Engineering & Land Surveying, Inc. for Aderhold Properties, Inc.

RCS# 2164  
8/07/00  
5:15 PM

Atlanta City Council

Regular Session

00-0-0970

Abandoning portions of upper level  
Alabama St. : quitclaim to DDA  
ADOPT AS AMEND

YEAS: 11  
NAYS: 2  
ABSTENTIONS: 1  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

|           |           |           |             |
|-----------|-----------|-----------|-------------|
| Y McCarty | N Dorsey  | N Moore   | Y Thomas    |
| Y Starnes | Y Woolard | Y Martin  | B Emmons    |
| Y Bond    | Y Morris  | Y Maddox  | A Alexander |
| Y Winslow | Y Muller  | Y Boazman | NV Pitts    |

00-0-0970

**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**