



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** May 1, 2019

Approved

Date

5/9/19

**COUNCIL DISTRICT:** 9

**SUBJECT: VACATION OF THE 35-FOOT AND 20-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 662**

## RECOMMENDATION

Conduct a Public Hearing and adopt a resolution:

- (a) Approving the report of the Director of Public Works setting forth the facts justifying the vacation of the 35-foot and 20-foot light and air easements ("Setback Easements") located within Tract No. 662.
- (b) Vacating the 35-foot and 20-foot light and air easements located within Tract No. 662.
- (c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

## OUTCOME

Upon recordation of the resolution of vacation, the Setback Easements located within Tract No. 662 will be vacated. By vacating the Setback Easements, all properties within Tract No. 662 will conform to the current San Jose Municipal Code front and side setback requirements of 20-feet and 12.5-feet, respectively, for single family residences in zoning district R1-8 and the property owners within Tract No. 662 can construct building improvements up to the current setbacks.

## **BACKGROUND**

Sam Tajik, property owner of 15438 Lone Hill Road, has submitted an application for the vacation of the 35-foot front setback easement on his property, which is Lot 4 of Tract No. 662. The setback easement was created by dedication on the map of Tract No. 662 Hawley Gardens Subdivision, recorded on September 12, 1950 in Book 30 of Maps, Pages 36-37, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all properties, except Lot 8, created by the subdivision. The property owner has indicated his desire to construct future improvements to his property that would encroach into the setback easement. The setback easement prohibits a building from encroaching into this area.

On April 30, 2019, the City Council adopted a resolution which declared the Council's intention to vacate the Setback Easements within the tract. The resolution also approved a map showing the setback easements to be vacated, set a Public Hearing for May 21, 2019, at 1:30 p.m., directed the City Clerk to file the vacation map and advertise said public hearing, and directed the Director of Public Works to post the site with a Notice of Vacation.

## **ANALYSIS**

Staff has reviewed the vacation application and determined that the Setback Easements along Lone Hill Road and Los Gatos-Almaden Road within Tract No. 662 can be vacated as they are not necessary for current or prospective use. Ordinance No. 29821 "An Ordinance of the City of San Jose Amending Title 20 of the Municipal Code to Amend Various Sections of Chapter 20.30...", effective on December 30, 2016, amended the front setback requirement of a single family residence in zoning district R1-8 to 20-feet. Section 20.30.200 of Title 20 of the Municipal Code also requires the side setback for a corner lot single family residence in zoning district R1-8 to be 12.5 feet. Consequently, upon review of the vacation application by Planning staff, it was determined that all setback easements for the entire subdivision are no longer necessary for public purposes in favor of the more appropriate current zoning setbacks. Staff also concluded that it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements. This reduction in the setback was found consistent with the goals of the Envision San Jose 2040 General Plan ("General Plan") to encourage additional density and parking in conventional Residential Zoning Districts.

Since the December 2016 adoption of Ordinance No. 29821, the volume of setback easement vacation requests has increased. As a result, staff coordinated with the City Attorney's Office and the Office of the County Recorder to establish a proactive process to vacate all setback easements for the entire subdivisions as opposed to the prior practice of vacating setback easements for an individual property upon request. Therefore, staff recommends including the Setback Easements in this vacation process. Vacating setback easements by subdivision would reduce the overall cost to property owners as multiple applications and corresponding costs would not be repeated.

Consequently, because zoning district R1-8 applies to all of Tract No. 662, staff has determined that the Setback Easements may be vacated for the entire tract, as all properties in the subdivision will be required to comply with the current setbacks for single family residence in zoning area R1-8 (Municipal Code 20.30.200). Additionally, as this proposed vacation will remove setback easements that conflict with the 2016 Council-approved reduced setback requirements in the City's zoning code for this property, staff finds that the proposed vacation is consistent with and will facilitate a General Plan goal to allow additional density and parking with the zoning district R1-8.

Through County records, staff have identified the owners within Tract No. 662 of the properties subject to the Setback Easements. There are existing public utility easements within the tract that will remain on the properties.

### **EVALUATION AND FOLLOW-UP**

If Council approves the resolution vacating the setback easements within Tract No. 662, no further action by City Council will be required. The City Clerk will record the resolution of vacation at which time the vacation will be complete.

### **PUBLIC OUTREACH**

Extensive outreach was conducted by staff prior to the 2016 approval of Ordinance No. 29821 including facilitating numerous community and stakeholder meetings.

This memorandum will be posted on the City's website for the May 21, 2019, City Council agenda. Additionally, staff will post the site with a Notice of Vacation, file the vacation maps and advertise said public hearing, which alerts the public to the hearing date, location, and time.

### **COORDINATION**

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement and the City Manager's Budget Office. The vacation and resolution have been reviewed by the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

Vacating the setback easement is in alignment with the November 2016 Council approval of Ordinance No. 29821 which governs the setback requirements for single family residences in zoning district R1-8.

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**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

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**COST SUMMARY/IMPLICATIONS**

The City's cost to process the proposed vacation consists of staff time to prepare the documents and complete the transaction.

**CEQA**

Categorically Exempt, File No. PP19-026, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

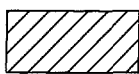
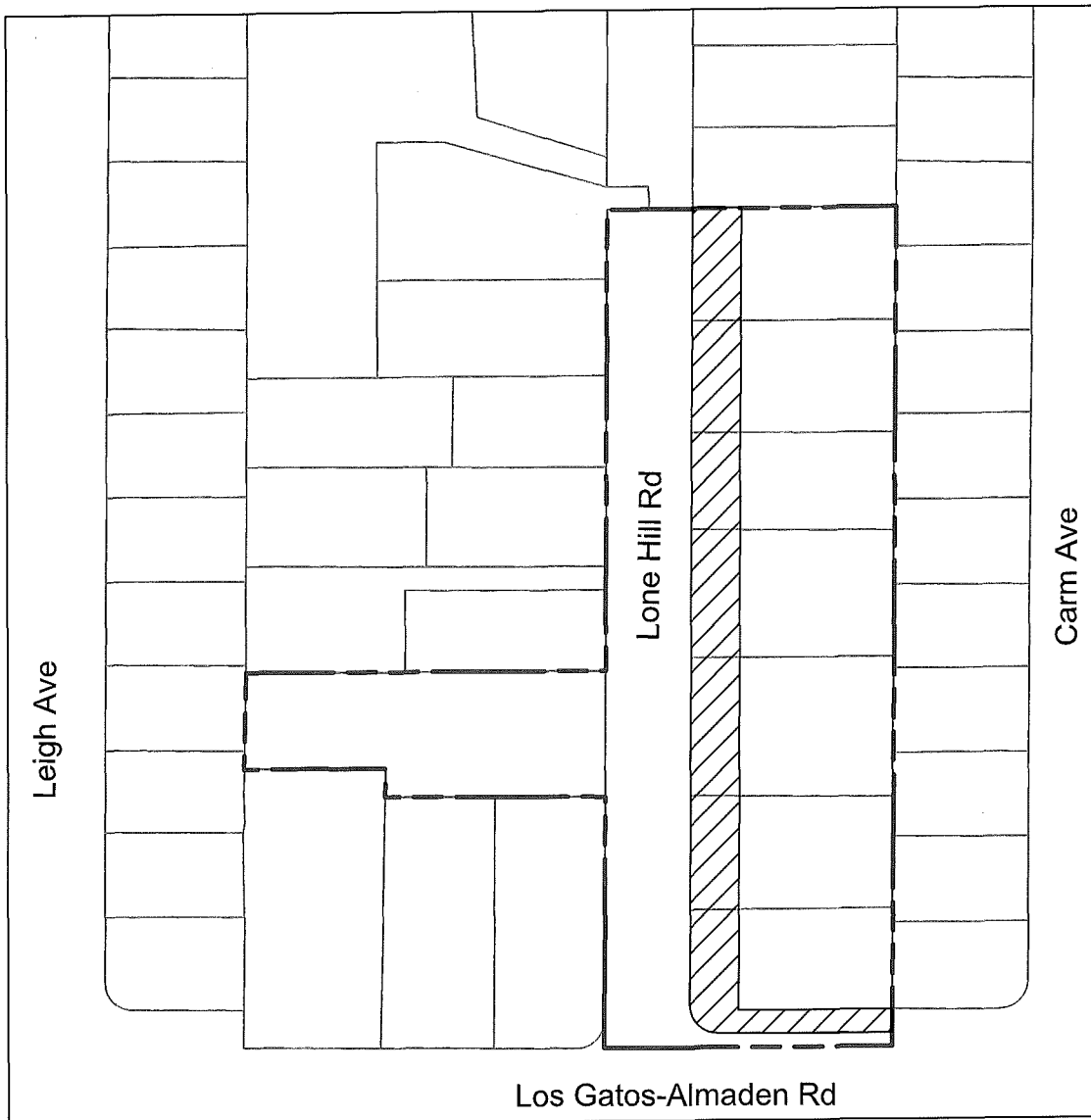
/s/  
MATT CANO  
Director of Public Works

For questions please contact Matthew Loesch, Deputy Director of Public Works, at (408) 975-7381.

Attachment: Location Map

# LOCATION MAP

SHOWING THE 35-FOOT AND 20-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 662 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 662

