



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: May 1, 2018

Approved

Date

5/10/18

COUNCIL DISTRICT: 9

**SUBJECT: VACATION OF THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS
WITHIN TRACT NO. 1098**

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 25-foot and 12.5-foot light and air easements (“setback easements”) located within Tract No. 1098;
- (b) Vacating the 25-foot and 12.5-foot setback easements located within Tract No. 1098; and
- (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 25-foot and 12.5-foot setback easements located within Tract No. 1098 will be vacated.

BACKGROUND

Deepak Kumar, property owner of 2823 Quinto Way, has submitted an application for the vacation of the 25-foot setback easement on his property, which is Lot 585 of Tract No. 1098. The setback easement was created by dedication on the map of Tract No. 1098 Hacienda Gardens Unit No. 5, recorded on May 25, 1954 in Book 50 of Maps, Pages 18-19, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all properties created by the subdivision. Mr. Kumar 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 May 1, 2018, the City Council adopted a resolution which declared the Council's intention to vacate the setback easements. The resolution also approved a map showing the setback easements to be vacated, set a Public Hearing for May 22, 2018, 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 25-foot setback easement 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 from 25-feet 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 the 25-foot setback easement on the subject property 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 and staff has been researching methods to streamline the setback easement vacation process. In particular, staff has been coordinating with the City Attorney's Office and the Office of the County Recorder, on a proposal to vacate setback easements per entire subdivisions as opposed to the current practice of vacating setback easements per specific property. Vacating, when appropriate, 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. 1098, 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. Therefore, staff is proposing all of the setback easements within Tract No. 1098 be

proposed for vacation and that setbacks for this subdivision be governed by the current San Jose Municipal Code.

According to the title report issued by Chicago Title Company, Deepak Kumar holds fee ownership to the area being proposed for vacation at 2823 Quinto Way. For the remaining properties within Tract No. 1098, each property owner who holds fee title within the setback easements have been identified through County records. In addition, there are existing public utility easements of varying widths 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. 1098, 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

This memorandum will be posted on the City's website for the May 22, 2018, 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.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Vacating the setback easements 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.

HONORABLE MAYOR AND CITY COUNCIL

May 1, 2018

Subject: Vacation of the 25-Foot and 12.5-Foot Setback Easements Within Tract No. 1098

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COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees on November 8, 2017, during fiscal year 2017-2018, of \$5,264 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Exempt, File No. PP18-013, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/

MATT CANO

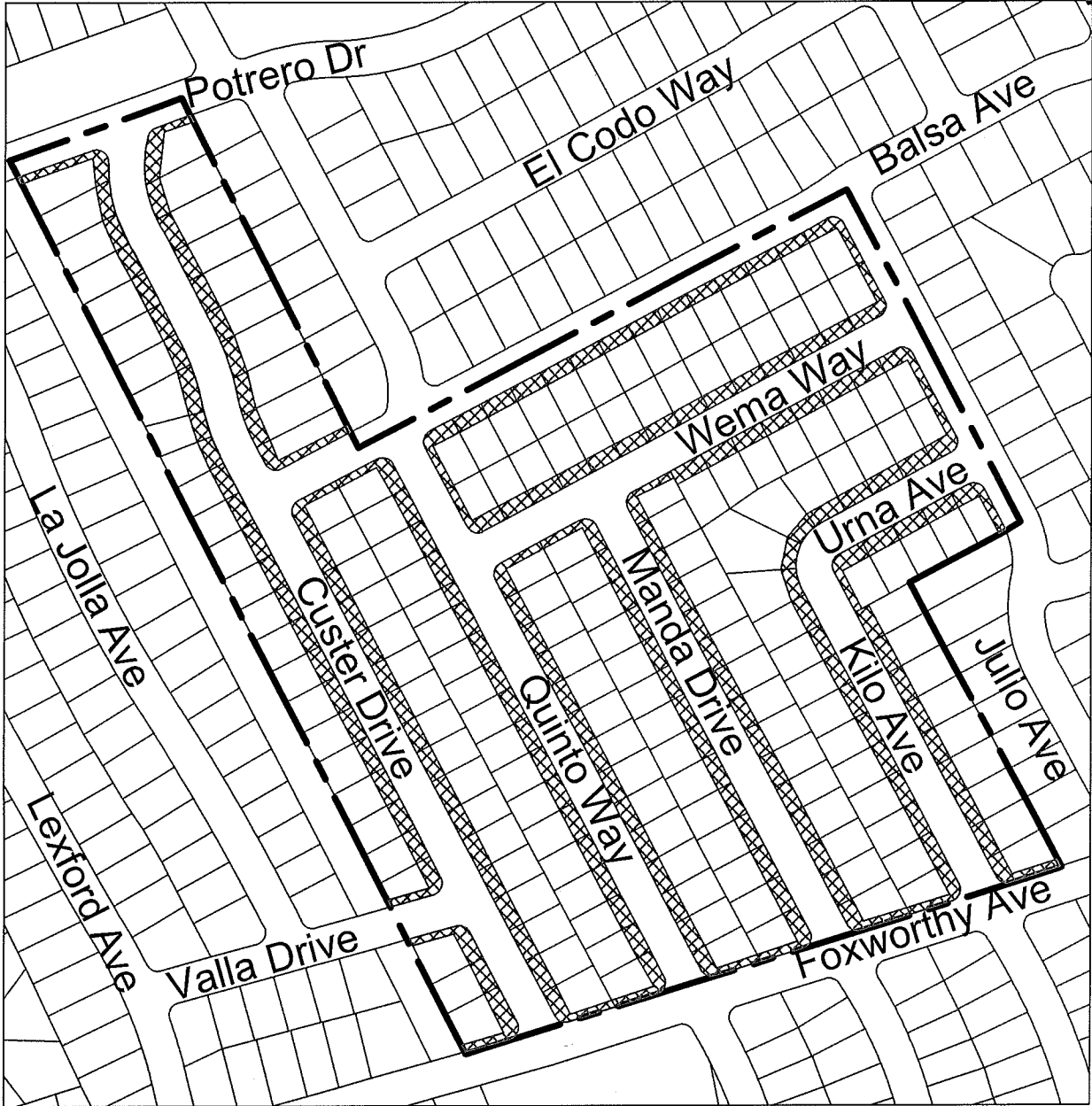
Director of Public Works

For questions please contact Ryan Do, Division Manager of Public Works, at (408) 535-6899.

Attachment: Location Map

LOCATION MAP

SHOWING THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS
WITHIN TRACT NO. 1098 TO BE VACATED



 AREA TO BE VACATED

 BOUNDARY OF TRACT 1098

