



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jon Cicirelli

**SUBJECT:** SEE BELOW

**DATE:** February 26, 2018

Approved

Date

3/8/18

**COUNCIL DISTRICT: 3**

**SUBJECT: MAINTENANCE, ACCESS, AND ENCROACHMENT AGREEMENT BETWEEN THE CITY OF SAN JOSE AND TM SAN JOSE 78 LLC FOR PRIVATE IMPROVEMENTS BENEATH A PORTION OF THE COLEMAN AVENUE OVERCROSSING**

## RECOMMENDATION

Adopt a resolution:

- (1) Approving a permit for a major encroachment ("Major Encroachment Permit") to TM San Jose 78, LLC, a Delaware limited liability company ("Owner") to allow the maintenance of private encroachments within City right-of-way pursuant to San Jose Municipal Code Chapter 13.37 ("Ch. 13.37") to be located underneath the Coleman Avenue Overcrossing utilizing approximately 2,176 square feet of right-of-way for private purposes;
- (2) Authorizing the Director of Public Works to execute the Maintenance, Access, and Encroachment Agreement Between the City of San Jose and TM San Jose 78 LLC ("Agreement") to govern the private encroachments and other private uses pursuant to the Owner's private parking easement; and
- (3) Directing the Director of Public Works to record the executed Agreement with the Office of the Recorder, County of Santa Clara.

## OUTCOME

Approval of the resolution authorizing the above actions will allow the proposed residential development to construct private improvements, which includes private parking and a trash enclosure, both of which are in conformance with the approved planning permit for the development.

## **BACKGROUND**

On June 15, 2004, City Council adopted the Brandenburg Mixed Use Project/North San Pedro Housing Sites EIR (“EIR”) via Resolution No. 72170. The EIR included a masterplan to construct 1,500 residential units and 60,000 square feet of commercial space within an area generally bounded by the Union Pacific Railroad to the north, Market Street to the east, St. James Street to the south, and State Route 87 to the west, as shown in the attached location map (Exhibit “A”).

Subsequently, the Director of Planning approved a Site Development Permit number H14-002 (“Development”) on May 28, 2014 for the construction of 43 single-family attached residences located on a 1.43 gross acre site that is bounded by North San Pedro Street, West Julian Street, Bassett Street, and Coleman Avenue (“Property”) and identified as “Block A” in Exhibit “A”. The Development anticipated the use of certain areas below the existing Coleman Avenue Overcrossing to satisfy the Development’s parking obligations.

A Parcel Map was recorded in Book 903 of Maps, Pages 46- 49 of Official Records, Office of the Recorder, County of Santa Clara on May 8, 2017 to subdivide the property. As part of the subdivision, it was determined that the portion of the Coleman Avenue Overcrossing, located within the Property, had not been expressly dedicated as public right-of-way while another portion was dedicated as a public street easement as recorded in Book 67 of Deeds, Page 549 of Official Records, Office of the Recorder, County of Santa Clara on April 4, 1883. In an effort to clarify the title to this area and obtain an express dedication for public right-of-way, the Owner dedicated a Grade Separated Street Easement for the Coleman Avenue Overcrossing as shown on Exhibit “B” and reserved an easement for vehicle parking purposes including the right to maintain all necessary surface improvements, underground pipelines, irrigation systems and associated appurtenances for private parking uses (“Private Parking”) consistent with the Grade Separated Street Easement.

The improvements contemplated by the Agreement and proposed with the Development, include Private Parking improvements within the Owner’s reserved rights for a private parking lot as well as additional improvements that are not within the Owner’s reserved rights for a private parking lot. The Private Parking improvements include asphalt paving, striping, sidewalk, and storm drainage facilities. The additional improvements, which are not within the Owner’s reserved rights, include a trash enclosure structure and an associated sanitary sewer lateral within the Private Parking area, as well as additional asphalt paving, striping and other surface improvements outside of the Private Parking area (“Encroachment”). The Private Parking improvements and Encroachment are shown and identified on Exhibit “B”. These improvements, together, would require a revocable encroachment and maintenance agreement from the City.

The Owner, as the adjacent property owner, has submitted an application for a Major Encroachment Permit, consented to the terms of the Agreement, and provided all documents consistent with the requirements of Ch. 13.37.

### **ANALYSIS**

Pursuant to Ch. 13.37, the City Council may approve a Major Encroachment Permit for improvements that will be privately owned and maintained within the public right-of-way.

Staff has evaluated the Encroachment in conjunction with the approval criteria outlined in Ch. 13.37 and recommend approval of a Major Encroachment Permit. The proposed encroachment will not unreasonably interfere with or disrupt the public's use of Coleman Avenue since the proposed private improvements are located entirely underneath Coleman Avenue and the Agreement requires the Owner to remove or modify them if there is a conflict with the public's use. Additionally, the Major Encroachment Permit will allow the Development to satisfy the parking requirements as conditioned with the approved Site Development Permit. The Agreement includes maintenance requirements and other terms and conditions for the private improvements.

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

No further action by the Council will be required.

### **PUBLIC OUTREACH**

The public was given the opportunity to comment on the proposed development and project site plan with the inclusion of the private encroachments within Coleman Avenue as part of the Planning Permit review and approval process for the Development. Additionally, this memorandum will be posted to the City's website for the March 20, 2018, City Council meeting.

### **COORDINATION**

The Agreement has been coordinated with the City Risk Manager Office and the City Manager's Budget Office. The Agreement and Resolution have been reviewed by the City Attorney's Office.

### **COMMISSION RECOMMENDATIONS**

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

February 26, 2018

**Subject: Maintenance, Access, and Encroachment Agreement with TM San Jose 78 LLC**

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**COST SUMMARY/ IMPLICATIONS**

The Public Works Department collected cost-recovery fees on October 26, 2017, during Fiscal Year 2017-2018 in the amount of \$3,370 to process the Major Encroachment Permit. These fees were received to support the Public Works Development Fee Program.

**CEQA**

Addendum to the Brandenburg Mixed Use Project / North San Pedro Housing Site Environmental Impact Report (Resolution No. 72170).

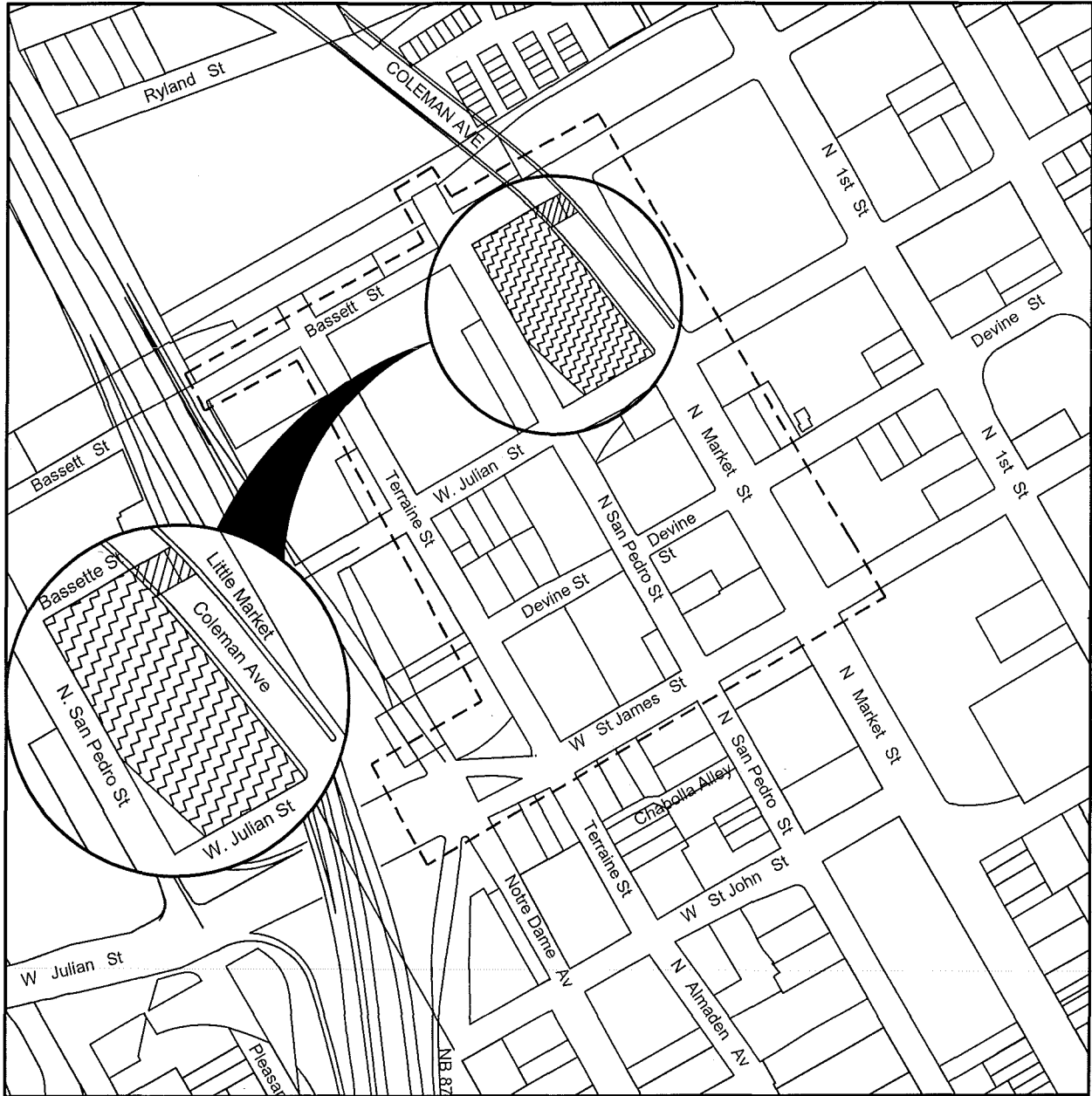
/s/  
JON CICIRELLI  
Acting Director of Public Works



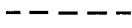
For questions please contact Michael Liw, Deputy Director, at (408) 535-6835.

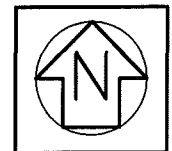
Attachments: Exhibit A Location Map  
Exhibit B Coleman Avenue Overcrossing Encroachment Areas Map

# EXHIBIT A LOCATION MAP

SHOWING THE BRANDENBURG MIXED DEVELOPMENT BOUNDARY

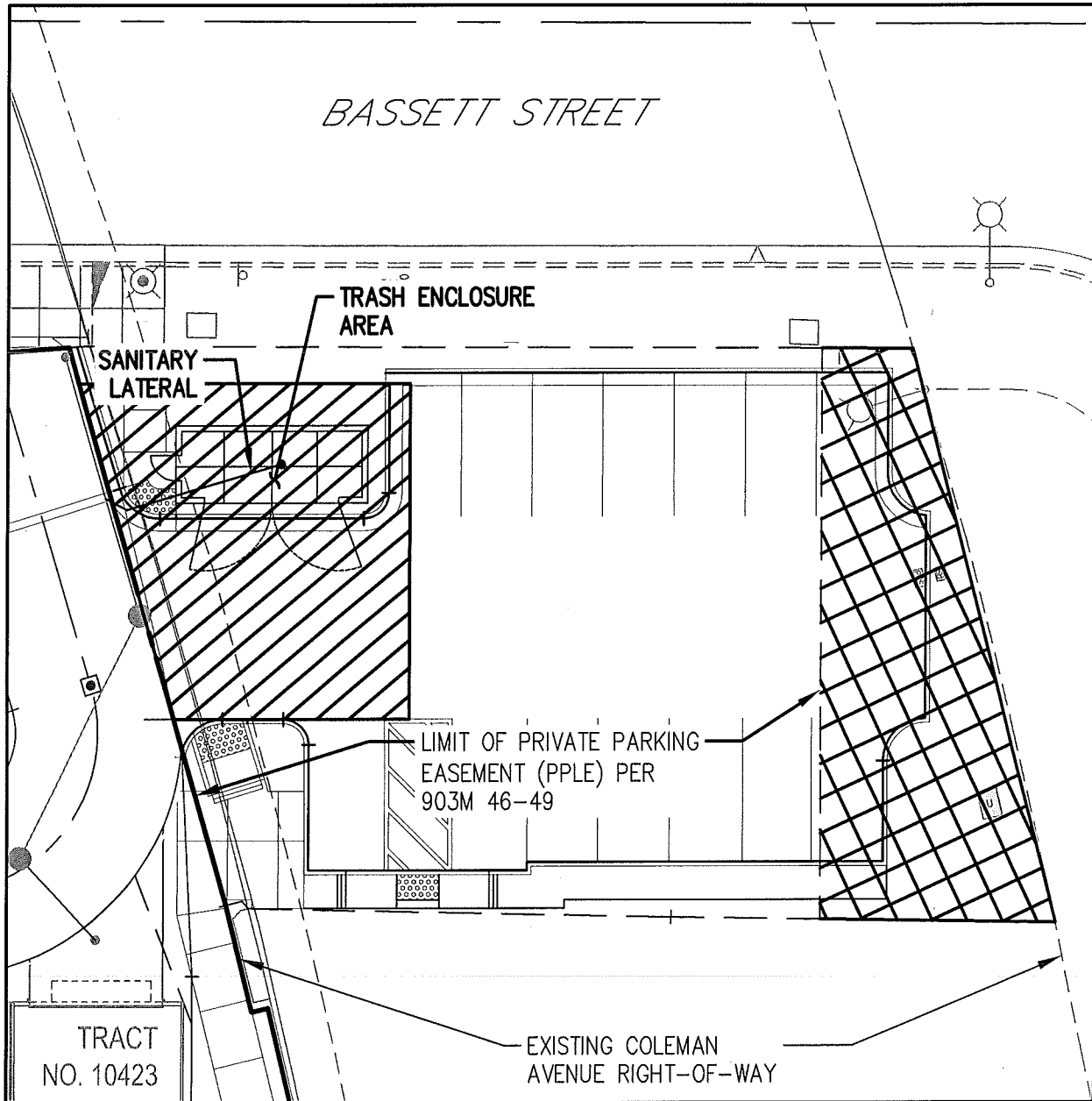


-  PORTION UNDER COLEMAN AVENUE  
OVERCROSSING (DEVELOPMENT  
ENCROACHMENT - SEE EXHIBIT B)
-  BLOCK "A" DEVELOPMENT
-  DEVELOPMENT BOUNDARY



# EXHIBIT B

## COLEMAN AVENUE OVERCROSSING ENCROACHMENT AREAS



 ENCROACHMENT UNDER COLEMAN AVENUE RIGHT-OF-WAY WITHIN PRIVATE PARKING LOT EASEMENT (PPE)

 ENCROACHMENT UNDER COLEMAN AVENUE RIGHT-OF-WAY WITHIN STREET EASEMENT

