

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE SUMMARILY VACATING A PORTION OF  
KEARNY STREET AT 255 S. MONTGOMERY STREET**

**WHEREAS**, Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public street if the City Council determines that it is excess right-of-way of a street not required for street purposes, and there are no in-place public utility facilities that are in use and would be affected by the vacation; and

**WHEREAS**, the City Council intends to summarily vacate an 18,256 square foot portion of Kearny Street located at 255 S. Montgomery Street ("Subject Property") constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

BEING A PORTION OF KEARNY STREET AS SHOWN ON THAT CERTAIN MAP ENTITLED "INFIRMARY SURVEY" ON FILE IN THE OFFICE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA IN BOOK 3 OF SUPERVISOR'S MAPS NO. 129 AT PAGE 19, ALSO SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD ON NOVEMBER 14, 2018 IN BOOK 919 OF MAPS AT PAGES 4 AND 5, SANTA CLARA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NEW CENTERLINE OF THE PARK AVENUE AS SHOWN ON SAID RECORD OF SURVEY, AND DISTANT THEREON SOUTH 83°36'58" WEST, 413.00 FEET FROM THE CENTERLINE OF MONTGOMERY STREET, SAID POINT ALSO BEING THE INTERSECTION OF SAID NEW CENTERLINE OF PARK AVENUE WITH THE CENTERLINE OF SAID KEARNY STREET;

THENCE ALONG SAID CENTERLINE OF KEARNY STREET SOUTH 3°15'52" EAST, 57.59 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF PARK AVENUE AS SHOWN ON SAID RECORD OF SURVEY, SAID POINT ALSO BEING

THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE NORTH 83°36'58" EAST, 25.035 FEET TO A POINT ON THE EASTERLY LINE OF SAID KEARNY STREET;

THENCE CONTINUING ALONG SAID EASTERLY LINE SOUTH 3°15'52" EAST, 378.98 FEET TO THE CENTERLINE OF VACATED PINE STREET AS DESCRIBED IN THAT CERTAIN ORDINANCE NO. 2360 PASSED ON AUGUST 15, 1932 AND FILED AUGUST 19, 1932, PURSUANT TO CERTAIN RESOLUTION NO. 5555 PASSED ON MAY 23, 1932;

THENCE ALONG SAID CENTERLINE OF PINE STREET SOUTH 86°44'08" WEST, 25.00 FEET TO A POINT ON THE CENTERLINE OF SAID KEARNY STREET;

THENCE ALONG SAID CENTERLINE OF KEARNY STREET NORTH 3°15'52" WEST, 25.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID VACATED PINE STREET;

THENCE ALONG SAID NORTHERLY LINE OF PINE STREET SOUTH 86°44'08" WEST, 25.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID KEARNY STREET;

THENCE ALONG SAID WESTERLY LINE OF KEARNY STREET NORTH 3°15'52" WEST, 351.26 FEET TO A POINT ON SAID SOUTHERLY RIGHT OF WAY LINE OF PARK AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF PARK AVENUE NORTH 83°36'58" EAST, 25.035 FEET TO THE POINT OF BEGINNING.

CONTAINING 18,256 ± SQUARE FEET.

**WHEREAS**, attached to this Resolution as Exhibit "A" and incorporated herein is a map approved by the Director of the Department of Public Works on November 9, 2018 entitled "PLAT MAP SHOWING THAT PORTION OF KEARNEY STREET TO BE VACATED" showing the Subject Property; and

**WHEREAS**, attached to this Resolution as Exhibit “B” and incorporated herein is a copy of the report, dated November 13, 2018 that the Director of the Department of Public Works submitted to the City Council setting forth the facts justifying the summary vacation of the Subject Property (hereinafter “Report”);

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

**SECTION 1.** The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:

- A. The Subject Property is excess right-of-way of a street not required for street purposes; and
- B. Government Code Section 65402 does not apply to this vacation; and
- C. The proposed vacation is consistent with the City’s General Plan; and
- D. The Subject Property is unnecessary for nonmotorized transportation as bordering rights-of-way are available and more suitable for such transportation; and
- E. There are no in-place public utility facilities located within the Subject Property that would be affected by the proposed vacation; and
- F. The public convenience and necessity does not require the reservation of a public service easement.

**SECTION 2.** Based upon the findings made in Section 1 of this Resolution and the provisions of Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California, the City Council does hereby summarily vacate the Subject Property.

**SECTION 3.** The City Clerk is hereby directed to record a certified copy of this Resolution, including the exhibits hereto, with the Office of the Recorder for the County of Santa Clara.

**SECTION 4.** From and after the date this Resolution is recorded, the Subject Property will no longer constitute a public street.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

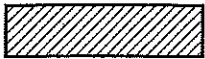
ATTEST:

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TONI TABER, CMC  
City Clerk

# PLAT MAP

SHOWING THAT PORTION OF KEARNY STREET TO BE VACATED

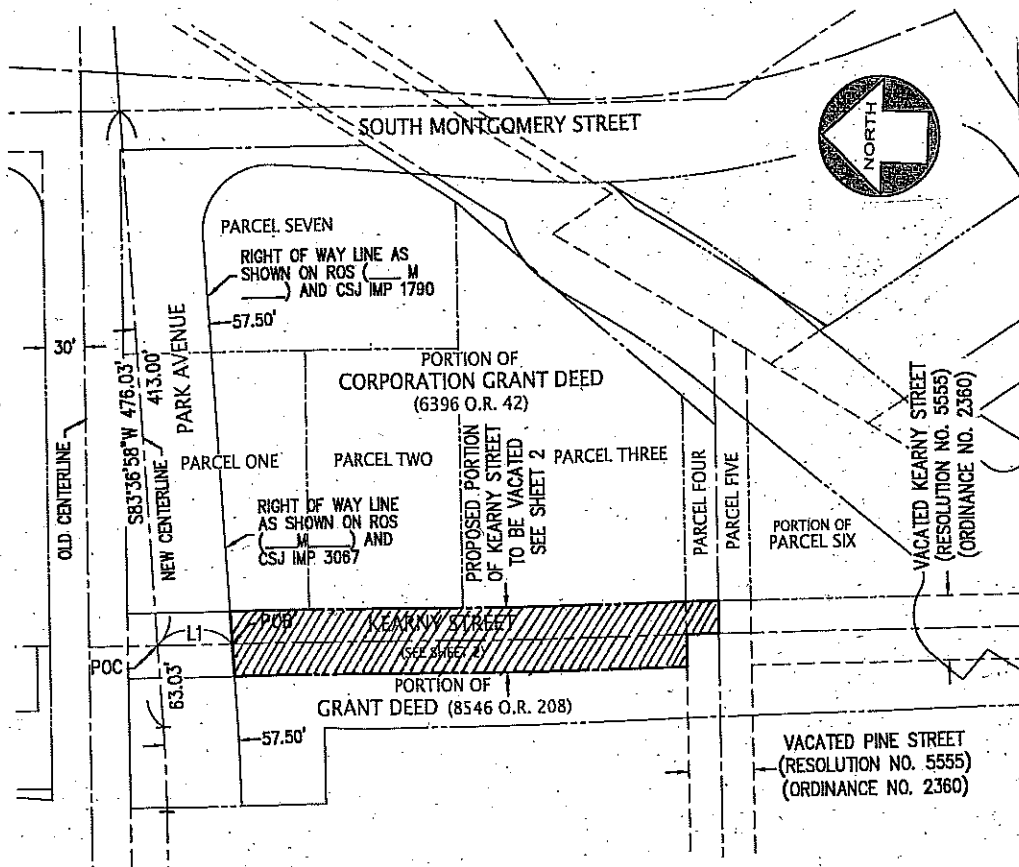


AREA TO BE VACATED

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, AND APPROVED BY SAID CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ BY RESOLUTION NUMBER \_\_\_\_\_

CITY CLERK, CITY OF SAN JOSE

*Matt Cano*  
MATT CANO APPROVED THIS 9 DAY OF November  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT: SEE BELOW**

**DATE:** November 13, 2018

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Approved

Date

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**COUNCIL DISTRICT: 6**

**SUBJECT: SUMMARY VACATION OF A PORTION OF KEARNY STREET AT 255 SOUTH MONTGOMERY STREET**

**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 summary vacation of 18,256 square feet of street right-of-way at 255 South Montgomery Street (“Subject Portion”);
- (b) Summarily vacating the Subject Portion, which is excess right-of-way and not required for street or highway purposes; 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 Subject Portion will be abandoned as a public street.

**BACKGROUND**

The City proposes to vacate 18,256 square feet of the Subject Portion of Kearny Street (see attached map), adjacent to 255 South Montgomery Street (APN 261-37-025).

The Subject Portion proposed for vacation is currently used as part of the City's Fire Training Center. The right-of-way is a remnant piece of Kearny Street that was never abandoned when the Fire Training Center was constructed 1971. The Subject Portion is currently occupied by building structures and has not been used as a public street since the Fire Training Center was constructed.

There are existing City-owned storm and sanitary utility lines crossing the Subject Portion as well as other parts of the property on which the Subject Portion is located. The Subject Portion does not contain any other in-place public facilities that are in use.

### **ANALYSIS**

Pursuant to Streets and Highways Code Section 8334, the City may summarily vacate an excess right-of-way of a street not required for street purposes if there are no in-place public utility facilities that are in use and would be affected by the vacation.

Staff has determined that the Subject Portion is excess right-of-way because it has been used as the City's Fire Training Center since 1971 and is a remnant that serves no street purposes.

The existing City-owned storm and sanitary utility lines crossing the Subject Portion will not be affected by the vacation because the City will remain the underlying owner of the property on which the Subject Portion is located. If this property is sold to a third party, the City would except from the sale an easement necessary to preserve any public facilities on the property or would require the purchaser to relocate the public facilities as a condition of the sale. Because there are no other public facilities located within the Subject Portion, no public facilities will be impacted by this vacation and staff does not believe the public convenience and necessity require the reservation of any public service easements to protect existing public facilities.

The portion of Kearny Street proposed for vacation is not a designated street on the City's General Plan Transportation Network Diagram. Staff has determined that the Subject Portion is not useful as a non-motorized transportation facility because it is encumbered by building structures and these uses (i.e. sidewalks and bike lanes) are already available along the bordering streets which are more suitable for such transportation.

According to the preliminary title report issued by First American Title Company, the City of San José holds fee title to the area to be vacated. If Council approves the proposed vacation, the public street easement will be terminated.

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

If Council adopts the resolution summarily vacating the Subject Portion, no further action by Council will be required.

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2018

**Subject: Summary Vacation of a Portion of Kearny Street at 255 South Montgomery Street**

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### **PUBLIC OUTREACH**

All concerned utility companies have been contacted in writing and have no objections to the proposed street vacation and have not requested a reservation of a public service easement as there are no public facilities in the Subject Portion other than the City's facilities.

This memorandum will be posted to the City's website for the December 4, 2018, City Council agenda.

### **COORDINATION**

The vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, Office of Economic Development, Police Department, Fire Department, and the City Manager's Budget Office. Additionally, the vacation and resolution have been reviewed by the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No Commission recommendation was associated with this action.

### **COST SUMMARY/IMPLICATIONS**

The Department of Public Works collected cost-recovery fees in Fiscal Year 2018-2019 of \$7,027.00 to process the subject vacation. These fees were deposited into the Public Works Department Services Fee Fund (Fund 001).

### **CEQA**

CEQA: Exempt File No. PP18-083.

/s/  
MATT CANO  
Director of Public Works

Attachment: Location Map

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