

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING THE PUBLIC EASEMENTS FOR LIGHT AND AIR LOCATED WITHIN TRACT 1010 UNIT NO. 2**

**WHEREAS**, Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to vacate a public service easement if the City Council determines that it is unnecessary for present or prospective public use; and

**WHEREAS**, on May 7, 2019, the City Council adopted Resolution No. 79070 (“Resolution of Intention”) declaring its intention to vacate all public easements for light and air dedicated on that certain map entitled Tract No. 1010 Unit No. 2 of Willow-Wood Park constituting all that real property situated in the City of San José, County of Santa Clara, State of California (“Subject Property”), more particularly described as:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF THAT CERTAIN MAP ENTITLED TRACT NO. 1010 UNIT NO. 2 OF WILLOW-WOOD PARK, RECORDED ON SEPTEMBER 2, 1952 IN BOOK 40, AT PAGES 22 AND 23, RECORDS OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE CERTAIN AREAS DEDICATED AS PUBLIC USE EASEMENTS FOR LIGHT AND AIR ON OR OVER THOSE CERTAIN STRIPS OF LAND LYING BETWEEN THE LINES OF THE STREET AND THE LINES EACH DESIGNATED AS “BUILDING SET BACK LINE” (B.S.B.L.) AS SHOWN UPON SAID MAP WITHIN TRACT NO. 1010.

**WHEREAS**, the Resolution of Intention gave notice that on June 4, 2019 in the Council Chambers of the City Council, the Council would hear all persons interested in the proposed vacation; and

**WHEREAS**, the Resolution of Intention was published in the manner prescribed by law; and

**WHEREAS**, notices of the proposed vacation were posted conspicuously along the line of the Subject Property in the manner prescribed by law; and

**WHEREAS**, on April 16, 2019, the Director of Public Works approved the map, including exhibits thereto, entitled “Map to Accompany the Legal Description for Vacation of Setback Easements within the Entire Tract No. 1010” (“Map”), attached hereto as “Exhibit A” and incorporated herein, which shows the Subject Property; and

**WHEREAS**, prior to the public hearing, the Map was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

**WHEREAS**, at the public hearing, the City Council had before it the Map and a report from the Director of Public Works to the City Council dated April 15, 2019 (“Report”), attached hereto as “Exhibit B” and incorporated herein; and

**WHEREAS**, at the public hearing, the City Council heard all persons interested in the proposed vacation and considered all evidence submitted;

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

**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 proposed vacation is in conjunction with the application of Efe Sozkezen of 4x Engineering, Inc., as the property owner of 2228 Marques Avenue, for the vacation of the 25-foot light and air setback easement on Lot 92 of Tract No. 1010; and

- B. The applicable setbacks for Lot 92 and all other lots within Tract No. 1010 shall be regulated through the City of San José's Municipal Code; and
- C. Government Code Section 65402 does not apply to this vacation; and
- D. There are other public service easements located within Tract No. 1010 that shall remain and are not proposed for vacation.

**SECTION 2.** The City Council makes the following conclusions based on the above findings:

- A. The Subject Property is unnecessary for present or prospective public use; and
- B. The proposed vacation is consistent with the City's General Plan; and
- C. All public easements other than those for light and air within Tract No. 1010 are not vacated pursuant to this action.

**SECTION 3.** Based on the above stated findings and conclusions, the City Council hereby vacates the public easements for light and air located on the Subject Property.

**SECTION 4.** 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 5.** From and after the date this Resolution is recorded, the Subject Property will no longer constitute public service easements for light and air.

RD:EEH:LCP  
05-23-19

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

T-147.088/1608230  
Council Agenda: 6-4-19  
Item Number: 4.3

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

Exhibit A

# MAP

TO ACCOMPANY THE LEGAL DESCRIPTION FOR VACATION  
OF SETBACK EASEMENTS WITHIN THE ENTIRE TRACT NO. 1010




AREA TO BE VACATED



BOUNDARY OF TRACT NO. 1010

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

*for*  RYAN DO  
MATT CANO  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

APPROVED THIS 16<sup>TH</sup> DAY OF APRIL 2019

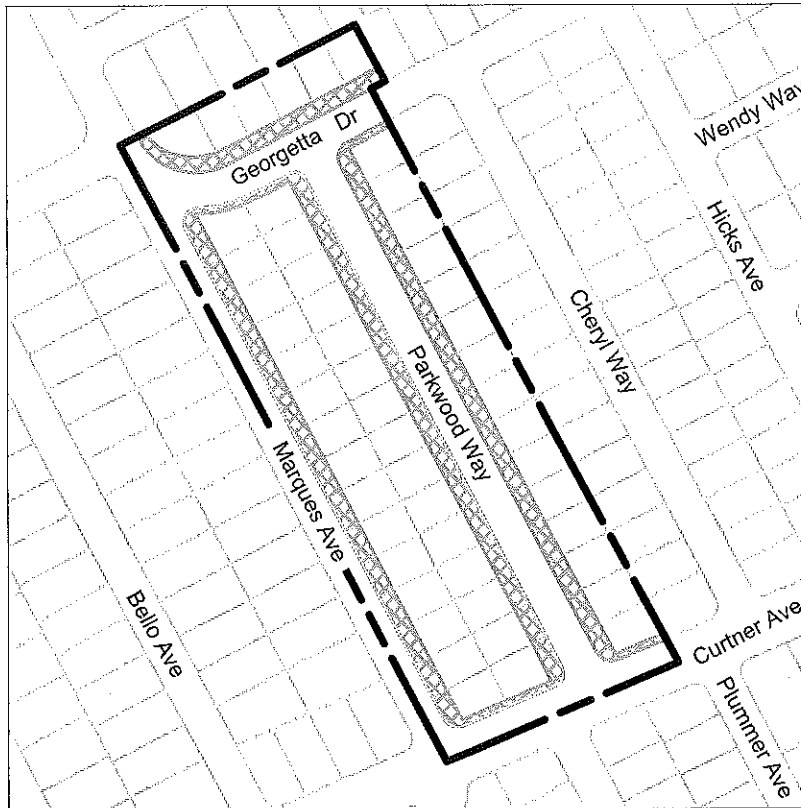


EXHIBIT A-1: TRACT MAP NO. 1010

EXHIBIT B-1: ASSESSOR PARCEL NUMBERS FOR TRACT NO. 1010



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** April 15, 2019

Approved

*D. D. SyL*

Date

*4/25/19*

**COUNCIL DISTRICT: 6**

**SUBJECT: VACATION OF THE 25-FOOT, 12.5-FOOT AND 10-FOOT SETBACK EASEMENTS WITHIN TRACT NO. 1010**

## RECOMMENDATION

- (a) Adopt a resolution of intention to vacate the 25-foot, 12.5-foot and 10-foot light and air easements (“Setback Easements”) located within Tract No. 1010.
- (b) Set a Public Hearing on Tuesday, June 4, 2019 at 1:30 p.m., for consideration of the vacation.
- (c) Direct the City Clerk to file the vacation map and advertise said public hearing.

## OUTCOME

Council adopts a resolution of intention to vacate the Setback Easements located within Tract No. 1010 and sets a Public Hearing for June 4, 2019 at 1:30 p.m. for consideration of the adoption of a resolution vacating the Setback Easements. By vacating the Setback Easements, all properties within Tract No. 1010 will be subject to the current San Jose Municipal Code’s setback requirements for single family residences in zoning district R1-8 and the property owners within Tract No. 1010 can construct building improvements up to the current setbacks.

## BACKGROUND

Efe Sozkesen, property owner of 2228 Marques Avenue, has submitted an application for the vacation of the 25-foot light and air easement on his property, which is Lot 92 of Tract No. 1010. This easement was created by dedication on the map of Tract No. 1010 Unit No. 2 of Willow-Wood Park, recorded on September 2, 1952, in Book 40 of Maps, at Pages 22 and 23, of Official Records, Office of the Recorder, County of Santa Clara. All properties created by this

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subdivision are subject to the Setback Easements. The property owner has indicated his desire to construct future improvements to his property that would encroach into the Setback Easements. The Setback Easements prohibit a building from encroaching into the area.

## **ANALYSIS**

Staff has reviewed the vacation application and determined that all Setback Easements in Tract No. 1010, Unit No. 2 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 Setback Easements are no longer necessary for public use 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 through vacating all setback easements for entire subdivisions as opposed to the prior practice of vacating setback easements for individual properties upon request. Therefore, staff recommends including all of the light and air easements created by Tract No. 1010, Unit No. 2 in this vacation process. Vacating setback easements by subdivision reduces 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. 1010, 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 recommending the Setback Easements within Tract No. 1010 be proposed for vacation and that setbacks for this subdivision be governed by the current San Jose Municipal Code. There are existing public utility easements within Tract No. 1010 that will remain on the properties.

By adopting the recommended resolution of intention to vacate, the Council will:

1. Declare its intention to vacate the Setback Easements located within Tract No. 1010;
2. Set a Public Hearing on June 4, 2019, at 1:30 p.m.;
3. Direct the City Clerk to file the vacation map and advertise said public hearing; and
4. Direct the Director of Public Works to post the site with a notice of the public hearing.

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

If Council approves this resolution, a Public Hearing will be set for June 4, 2019, at 1:30 p.m. to consider the adoption of a resolution vacating the Setback Easements within Tract No. 1010.

### **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 7, 2019, City Council agenda.

The resolution of intention to vacate the Setback Easements will be published in its entirety for at least two successive weeks prior to the public hearing in a newspaper of general circulation in the City of San Jose.

Notices of the proposed vacation will be posted along Tract No. 1010 no more than 300 feet apart for at least two weeks prior to the public hearing. The notices will state the passage of the resolution and the time and place of the public hearing.

### **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.



HONORABLE MAYOR AND CITY COUNCIL

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**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.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**COST SUMMARY/IMPLICATIONS**

The Public Works Department collected cost-recovery fees on March 18, 2019, during fiscal year 2018-2019, of \$5,916 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

**CEQA**

Categorically Exempt, File No. PP19-025, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations.

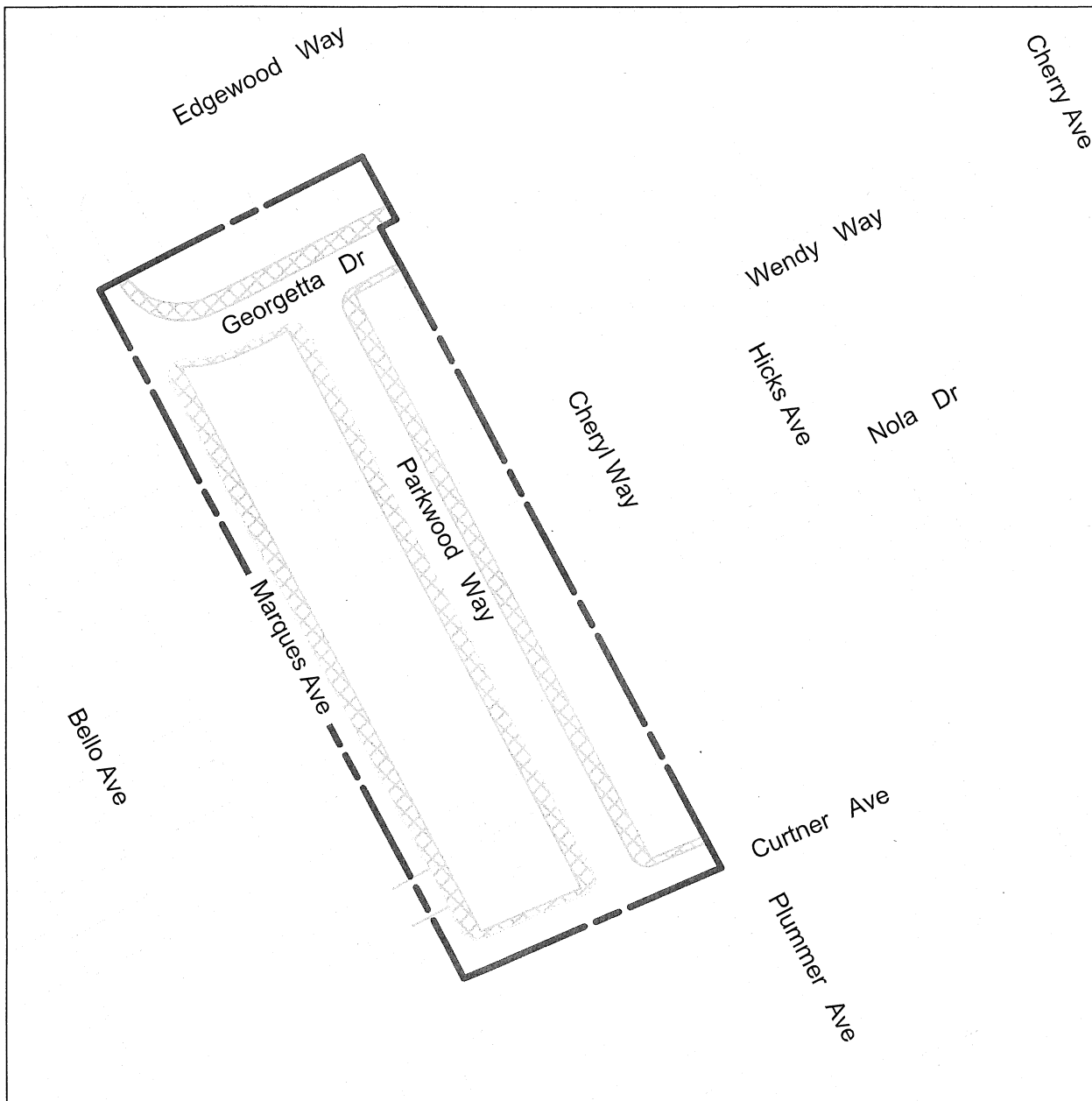
/s/  
MATT CANO  
Director of Public Works

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

Attachment: Location Map

# LOCATION MAP

SHOWING THE 25-FOOT, 12.5-FOOT, AND 10-FOOT SETBACK EASEMENTS WITHIN TRACT NO. 1010 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 1010

