

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** May 20, 2019

Approved

Date

5-21-19

**COUNCIL DISTRICT: 9**

**SUBJECT: VACATION OF THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 6285**

## RECOMMENDATION

- (a) Adopt a resolution of intention to vacate the 25-foot and 12.5-foot light and air easements ("Setback Easements") located within Tract No. 6285.
- (b) Set a Public Hearing on Tuesday, June 25, 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. 6285 and sets a Public Hearing for June 25, 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. 6285 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. 6285 can construct building improvements up to the current setbacks.

## BACKGROUND

Charmein Locascio, property owner of 1670 Glenrock Court, has submitted an application for the vacation of the 25-foot light and air easement on her property, which is Lot 5 of Tract No. 6285. This easement was created by dedication on the map of Tract No. 6285, recorded on September 20, 1978 in Book 426 of Maps, at Pages 56 and 57, of Official Records, Office of the Recorder, County of Santa Clara. All properties created by this subdivision are subject to the

Setback Easements. The property owner has indicated her desire to construct future improvements to her 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. 6285 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 the light and air easements created by Tract No. 6285 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. 6285, 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. 6285 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. 6285 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. 6285;
2. Set a Public Hearing on June 25, 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 25, 2019, at 1:30 p.m. to consider the adoption of a resolution vacating the Setback Easements within Tract No. 6285.

### **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 June 4, 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. 6285 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 April 12, 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. 3-24873, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations.

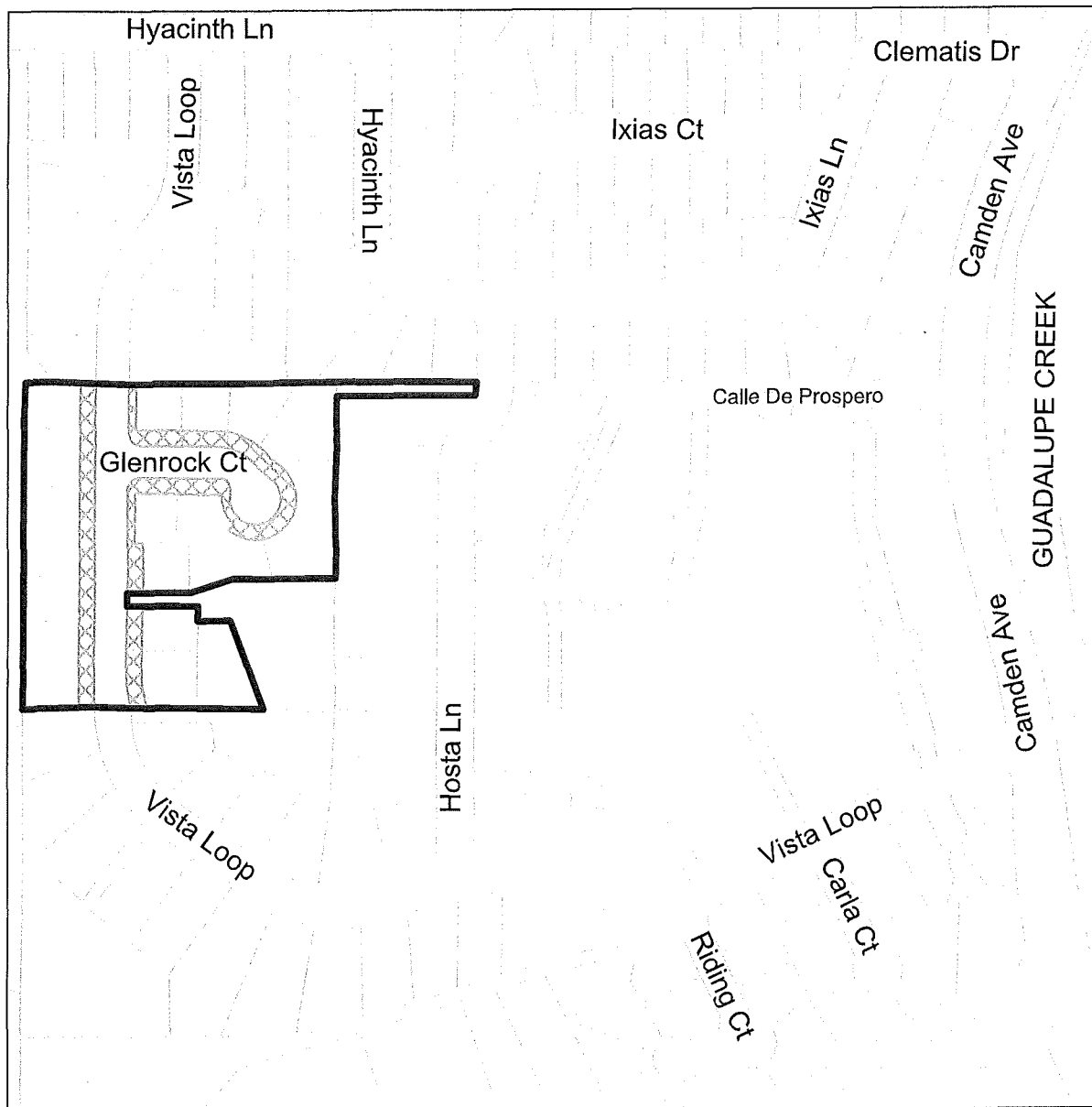
/s/  
MATT CANO  
Director of Public Works

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

Attachment: Location Map

# LOCATION MAP

SHOWING THE 25-FOOT AND 12.5-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 6285 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 6285

