

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE VACATING A 25-FOOT SETBACK EASEMENT
LOCATED AT 5159 & 5181 BREWSTER AVENUE**

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 November 14, 2017, the City Council adopted Resolution No. 78412 ("Resolution of Intention") declaring its intention to vacate a twenty-five foot (25') public service easement for light and air 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:

5159 BREWSTER AVENUE (421-21-032)

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF LOT 55, "TRACT NO. 1714", FILED JUNE 29, 1956, MAP BOOK 71,
PAGES 1, 2 AND 3, SANTA CLARA COUNTY RECORDS, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 25 FEET WIDE, THE SOUTHERLY LINE DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 55, THENCE ALONG
THE SOUTHERLY LINE OF SAID LOT 55, SOUTH 89°45'00" WEST, 60.00 FEET.

CONTAINING 1,500 SQ. FT. MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE CENTER LINE OF BREWSTER AVENUE AS SHOWN ON MAPS 1-3 AND TAKEN AS NORTH 89°45'00" EAST.

51~~59~~81 BREWSTER AVENUE (421-21-034)

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF LOT 53, "TRACT NO. 1714", FILED JUNE 29, 1956, MAP BOOK 71, PAGES 1, 2 AND 3, SANTA CLARA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND, 25 FEET WIDE, THE SOUTHERLY LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 53, THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 53, SOUTH 89°45'00" WEST, 60.00 FEET.

CONTAINING 1,500 SQ. FT. MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE CENTER LINE OF BREWSTER AVENUE AS SHOWN ON MAPS 1-3 AND TAKEN AS NORTH 89°45'00" EAST.

WHEREAS, the Resolution of Intention gave notice that on December 5, 2017 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 September 28, 2017, the Director of Public Works approved the plat map entitled "Plat Map Showing the 25' Setback Easement to be Vacated" ("Plat Map"), attached hereto as "Exhibit A" and incorporated herein, which shows the Subject Property; and

WHEREAS, prior to the public hearing, the Plat 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 Plat Map and a report from the Director of Public Works to the City Council dated November 13, 2017 ("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 relates to 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 December 30, 2016, which amended the front setback requirement of single family residence in zoning district R1-8 from 25-feet to 20-feet and eliminated the need for the public service easement for light and air on the Subject Property; and
- B. Government Code Section 65402 does not apply to this 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.

SECTION 3. Based on the above stated findings and conclusions, the City Council hereby vacates the public service easement 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 a public service easement.

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk