

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING 25' and 15' LIGHT AND AIR EASEMENTS LOCATED AT 1199 CRESCENT DRIVE**

**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 28, 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 and a fifteen foot (15') 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:

1199 CRESCENT DRIVE (429-08-056)

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF LOT 31 OF TRACT NO. 169, MELLOW SOIL MANOR, UNIT NO. 2, RECORDED JANUARY 22ND, 1941 IN BOOK 5 OF MAPS, AT PAGE 34, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EASEMENT FOR LIGHT AND AIR ALONG THAT CERTAIN STRIP OF LAND LYING BETWEEN THE LINE DESIGNATED AS "BUILDING LINE" AND THE NORTHWESTERLY LINES MEREDITH AVENUE AND THE SOUTHWESTERLY LINE OF CRESCENT DRIVE AS SHOWN UPON SAID MAP.

CONTAINING 2770 +/- SQ. FT. MORE OR LESS.

**WHEREAS**, the Resolution of Intention gave notice that on December 19, 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 November 13, 2017, the Director of Public Works approved the plat map entitled "Plat Map Showing the 25' & 15' Setback Easements 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 27, 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 easements 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 easements 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.

RD:EEH:LCP  
12-1-17

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

EXHIBIT A

# PLAT MAP


SHOWING THE 25' & 15' SETBACK EASEMENTS  
TO BE VACATED



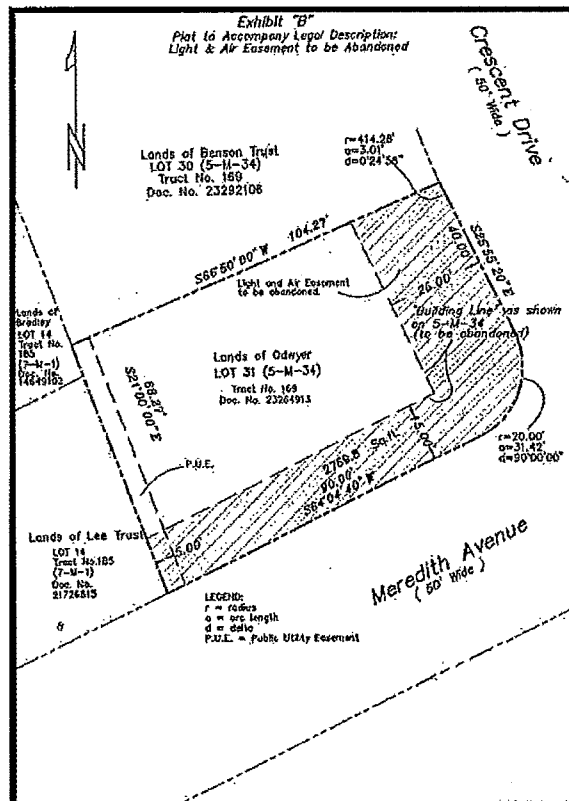
AREA TO BE VACATED

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

  
MICHAEL M. FORN  
BARRY NG  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

APPROVED THIS 13<sup>TH</sup> DAY OF NOVEMBER 2017





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Barry Ng

**SUBJECT:** SEE BELOW

**DATE:** November 27, 2017

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Approved

Date

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**COUNCIL DISTRICT: 6**

**SUBJECT: VACATION OF THE 25-FOOT AND 15-FOOT SETBACK EASEMENTS  
AT 1199 CRESCENT DRIVE**

## 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 vacation of the 25-foot and 15-foot light and air easements located at 1199 Crescent Drive;
- (b) Vacating the 25-foot and 15-foot light and air easements located at 1199 Crescent Drive; 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 25-foot and 15-foot light and air easements ("setback easements") located at 1199 Crescent Drive ("subject property") will be vacated.

## BACKGROUND

Augustine O'Dwyer and Caitriona O'Dwyer, property owners of 1199 Crescent Drive, have submitted an application for the vacation of the setback easements, 25-feet wide along Crescent Drive and 15 feet wide along Meredith Avenue, located on their corner lot property (see attached map). The setback easements are 2,770 square feet in total size, and were created by dedication on the map of Tract No. 169, recorded on January 22, 1941 in Book 5 of Maps, Page 34, of

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Official Records, Office of the Recorder, County of Santa Clara, and apply to all 15 properties created by the subdivision.

The property owners have indicated their desire to construct future improvements to their property that would encroach into the setback easements. The setback easements prohibit buildings from encroaching into these areas.

On November 28, 2017, the City Council adopted a resolution which declared the Council's intention to vacate the setback easements. The resolution approved a map showing the subject easements proposed to be vacated, set the public hearing for December 19, 2017, at 1:30 p.m., directed the City Clerk to file the vacation map and advertise said public hearing, and directed the Director of Public Works to post the site with a Notice of Vacation.

### **ANALYSIS**

Staff has reviewed the vacation application and has determined that the setback easements can be vacated because 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 on the subject property are no longer necessary for public purposes in favor of the more appropriate current zoning setbacks. In light of this, staff recommends vacating the entire 25-foot and 15-foot setback easements as it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements. This reduction in setbacks 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.

Because zoning district R1-8 applies to all of Tract No. 169, if proposed, the 25-foot and 15-foot setback easements may be vacated for the entire tract, as all properties in the subdivision could be required to comply with the current setbacks for single family residences in zoning area R1-8 (Municipal Code 20.30.200). However, only the property owners of subject property have applied for a vacation of the setback easements. In the future, other properties in the subdivision may seek a vacation of the setback easements.

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 this proposed vacation is consistent with and will facilitate a General Plan goal to allow additional density and parking with the zoning district R1-8. According to the title report issued by Fidelity National Title Company, Augustine O'Dwyer and Caitriona O'Dwyer hold fee ownership to the area being proposed for vacation at subject property.

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Additionally, there is an existing 5-foot public utility easement along the westerly property line that will remain on the subject property.

No new information regarding this vacation has been received since the November 28, 2017, Council Meeting.

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

If Council approves the resolution vacating the 25-foot and 15-foot setback easements at the subject property, no further action by City Council will be required. The City Clerk will record the resolution of vacation at which time the vacation will be complete.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the December 19, 2017, Council agenda. Additionally, staff posted the site with a Notice of Vacation which alerts the public to the hearing date, location and time.

### **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.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

Vacating the setback easements is in alignment with the November 2016 Council approval of Ordinance No. 29821 which lowered the front setback requirement for single family residences.

### **COST SUMMARY/IMPLICATIONS**

The Public Works Department collected cost-recovery fees on July 18, 2017, during fiscal year 2017-2018, of \$4,612 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.



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**CEQA**

Exempt, File No. PP17-069, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/

BARRY NG

Director of Public Works

Attachment: Location Map

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