



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: August 15, 2018

Approved

Date

8/15/18

COUNCIL DISTRICT: 6

**SUBJECT: VACATION OF THE 25-FOOT AND 12.5 FOOT SETBACK EASEMENTS
WITHIN TRACT NO. 65**

RECOMMENDATION

- (a) Adopt a resolution of intention to vacate the 25-foot and 12.5-foot light and air easements located ("setback easements") within Tract No. 65.
- (b) Set a Public Hearing on Tuesday, September 18, 2018, 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. 65 and sets a Public Hearing for September 18, 2018, 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. 65 will conform to the current San Jose Municipal Code front and side setback requirements of 20-feet and 12.5-feet, respectively, for single family residences in zoning district R1-8 and the property owners within Tract No. 65 can construct building improvements up to the current setbacks.

BACKGROUND

Robert Mintz of Valley Home Builders, has submitted an application on behalf of Brendon and Kirsten Bula, property owners of 1982 McDaniel Avenue, for the vacation of the 25-foot front setback easement on their property, which is Lot 106 of Tract No. 65. The setback easement was

created by dedication on the map of Tract No. 65 Rose Park Unit No. 4, recorded on October 26, 1937 in Book 3 of Maps, Page 1, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all 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 easement. The setback easement prohibits a building from encroaching into this area.

ANALYSIS

Staff has reviewed the vacation application and determined that the 25-foot setback easement 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 25-foot setback easement on the subject property is no longer necessary for public purposes 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 to vacate all setback easements for entire subdivisions as opposed to the prior practice of vacating setback easements for an individual property upon request. Therefore, staff recommends including the 12.5-foot setback easement 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. 65, 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 in the zoning district R1-8. Therefore, staff is recommending all setback easements within Tract No. 65 be proposed for vacation and that setbacks for this subdivision be governed by the current San Jose Municipal Code.

According to the title report issued by Fidelity National Title Insurance Company, Brendon and Kirsten Bula hold fee ownership to the area being proposed for vacation at 1982 McDaniel Avenue. For the remaining properties within Tract No. 65, each property owner who holds fee title within the setback easements have been identified through County records. There are existing public utility easements within the tract 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. 65;
2. Set a Public Hearing on September 18, 2018, 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 September 18, 2018, at 1:30 p.m. to consider the adoption of a resolution vacating the setback easements within Tract No. 65.

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 August 28, 2018, City Council meeting.

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.

FISCAL/POLICY ALIGNMENT

Vacating the setback easement 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.

HONORABLE MAYOR AND CITY COUNCIL

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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 June 11, 2018, during fiscal year 2017-2018, of \$5,264 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Exempt, File No. PP18-061, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/

MATT CANO

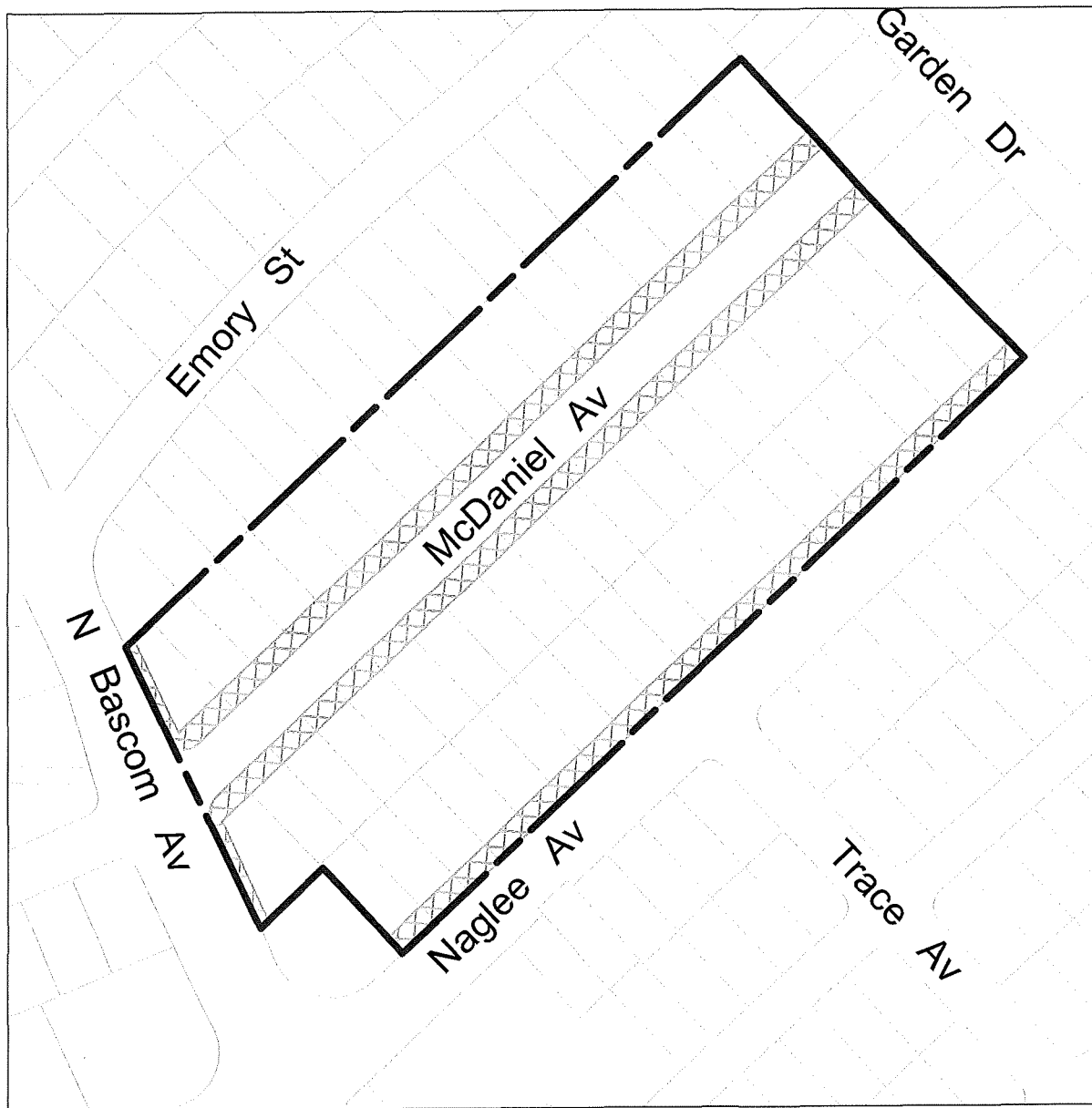
Director of Public Works

For questions please contact Matthew Loesch, Interim 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. 65 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 65

