



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** September 6, 2018

Approved

*D. D. S. L.*

Date

*9/6/18*

**COUNCIL DISTRICT: 6**

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

## 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 12.5-foot light and air easements ("setback easements") located within Tract No. 65;
- (b) Vacating the 25-foot and 12.5-foot setback easements located within Tract No. 65; 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 setback easements located at within Tract No. 65 will be vacated. 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 apply 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.

On August 28, 2018, the City Council adopted a resolution which declared the Council's intention to vacate the setback easements within the tract. The resolution also approved a map showing the setback easements to be vacated, set a Public Hearing for September 18, 2018, 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 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 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.

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 residences 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 tract, staff finds that the proposed vacation is consistent with and will facilitate the Envision San Jose 2040 General Plan goal to allow additional density and parking with 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. In addition, there are existing public utility easements within the tract that will remain on the properties.

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

If Council approves the resolution vacating the setback easements within Tract No. 65, 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**

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 September 18, 2018, City Council meeting. Additionally, staff will post the site with a Notice of Vacation, file the vacation maps and advertise said public hearing, 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 governs the setback requirements for single family residences in zoning district R1-8.

HONORABLE MAYOR AND CITY COUNCIL

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### **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**

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

/s/

MATT CANO

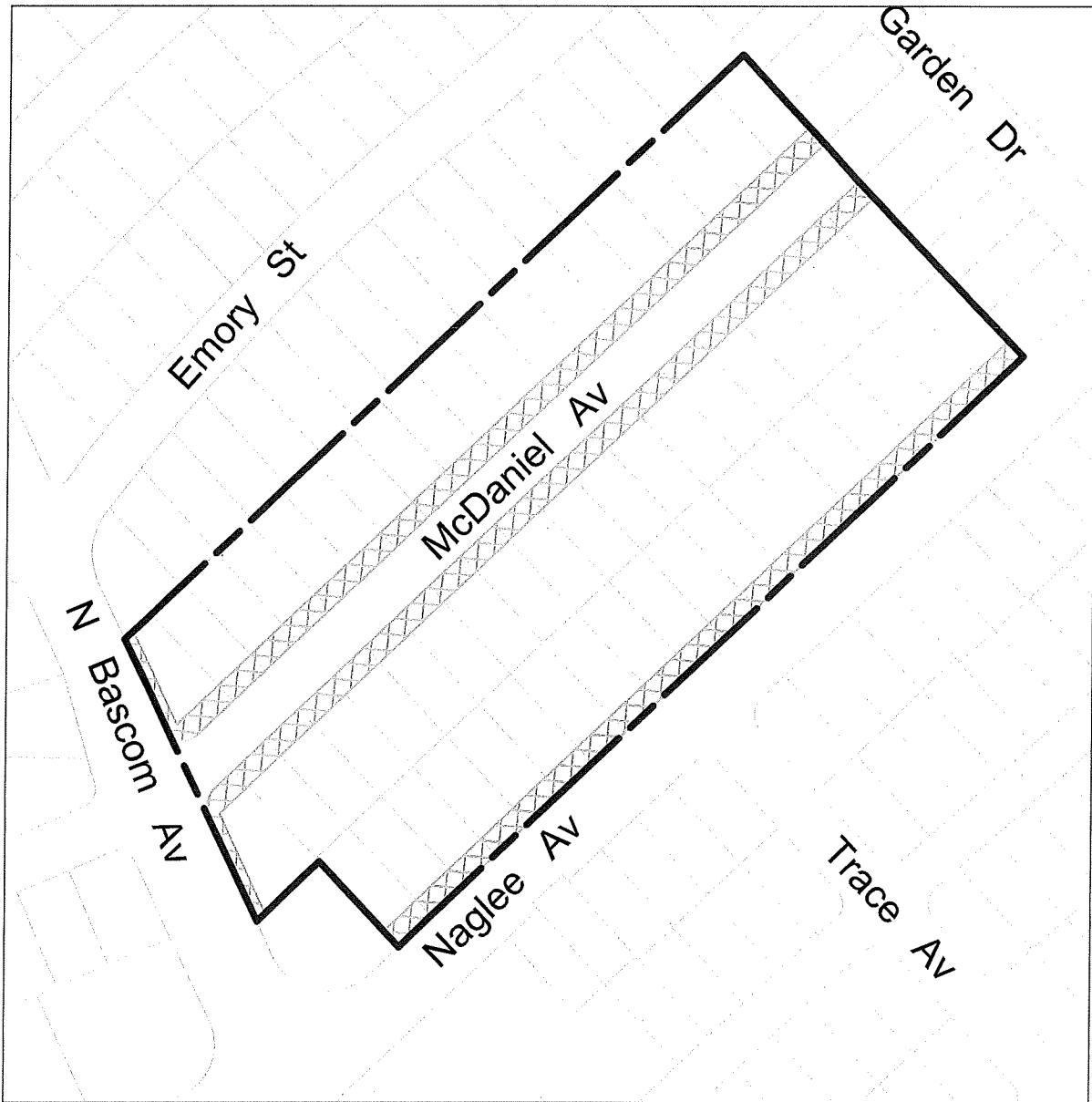
Director of Public Works

For questions please contact Matt 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

