



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** November 29, 2018

Approved

*D. D. S. L.*

Date

*11/29/18*

**COUNCIL DISTRICT: 2**

**SUBJECT: ORDINANCE DEDICATING PUBLIC RIGHT-OF-WAY AND PUBLIC PARKING EASEMENT AND AUTHORIZATION FOR MAJOR ENCROACHMENT AT 200 EDENVALE AVENUE**

## RECOMMENDATION

- (a) Approve an ordinance dedicating as public right-of-way approximately 26,610 square feet of a City-owned drive aisle (“Street Area”) located on the south boundary of Edenvale Gardens Regional Park (“Park”) west of Edenvale Avenue, and accepting the newly dedicated right-of-way into the City’s street system as Edenvale Court, and dedicating as a public parking easement approximately 2.658 acres of an existing City-owned surface parking lot (“Public Parking Area”) located at the southeastern corner of the Park.
- (b) Adopt a Resolution authorizing a Major Encroachment Permit pursuant to San Jose Municipal Code Chapter 13.37 for private improvements to be located adjacent to 200 Edenvale Avenue (“Property”).

## OUTCOME

City Council’s approval of the ordinance will make the Street Area public right-of-way and accept it into the City’s street system as Edenvale Court and create an easement in favor of the public to use the surface of the Public Parking Area for vehicle parking and drive aisle purposes. Additionally, City Council’s adoption of the resolution will allow the Director of Public Works to issue an Encroachment Permit for sidewalk improvements, concrete walls, driveways, and landscaping improvements that will reside within a portion of the newly-dedicated Street Area.

## **BACKGROUND**

On June 26, 2018, City Council adopted Resolution No. 78713, approving a Purchase and Sale Agreement with JMA Ventures, LLC (“JMA”) for the sale of the Hayes Mansion and related improvements located at 200 Edenvale Avenue. The Property is approximately 6.32 acres of City-owned land and 275,231 square feet of City-owned commercial building space. The staff memorandum dated June 8, 2018 provides a complete background of the property and renovation phases (Phase I, II, and III). As part of Phase III completed in 2002, a 356-space garage comprised of 142 underground spaces and 214 surface spaces was constructed in the Park.

On June 26, 2018, in a separate but related action, City Council approved the award of the 50-year lease of the subterranean portion of the Park parking garage to JMA. Staff and JMA are working to complete the lease agreement, but have discovered certain issues that require further City Council actions.

On November 6, 2018, City Council adopted Resolution No. 78859, authorizing the City Manager to negotiate and execute an amendment to the Purchase and Sale Agreement with JMA for the sale of the Hayes Mansion. This action allowed staff to continue the in-process sale of the Hayes Mansion and helped to ensure the bond redemption and transferred of ownership occur without further delay.

During the vetting and lease agreement process, staff and JMA discovered the survey of the property shows the drive aisle adjacent to the Hayes Mansion, perpendicular to Edenvale Avenue, lies within the Park, not the Property that is being conveyed as part of the Purchase and Sale Agreement. The City-owned drive aisle has historically been used as a public access route for the Property and the Park, including the Public Parking Area, but is currently not dedicated as public right-of-way. Similarly, the Public Parking Area has been used as a public parking lot for the Park, but there is no public easement over the existing surface parking lot.

## **ANALYSIS**

The City and JMA executed the Purchase and Sale Agreement for the Hayes Mansion on August 7, 2018. Since then, JMA has worked with staff toward the purchase of the property and lease agreement and invested time and funds into vetting the property.

To ensure that existing uses of the Street Area and Public Parking Area are maintained in the future, City staff is recommending that Council dedicate the two areas as public easements. The Street Area would provide JMA or any future owner with access to the Property’s main circular entrance, as is currently the practice. It is important to note that the Property is not land-locked and does have public street access along Edenvale Avenue. However, without the Street Area, there is no direct access to the Property’s main circular entrance. The public parking easement over the existing City-owned surface parking lot located at the southeastern corner of the Park would provide JMA or any future owner with continued public access to the underground

parking garage, but the easement would not itself be applicable to the underground parking structure.

As part of the Purchase and Sale Agreement, JMA will acquire certain existing private improvements including sidewalk, concrete walls, driveways, and landscaping (“Encroachment”) that lie outside of the Property boundaries and within a portion of the newly-dedicated Street Area. Under the City’s municipal code, these improvements are encroachments, and must obtain an encroachment permit to be privately maintained. JMA has requested that the City authorize it to maintain, repair, reconstruct, occupy and use the Encroachment in connection with its operation of the hotel and conference center located on the Property.

Staff has reviewed JMA’s request and determined that the Encroachment will provide a public benefit to those using the Street Area because it will maintain the existing landscaping and other improvements that add to the streetscape in the Street Area. There is no other reasonable method of obtaining the desired result because all of the improvements are already in place. Granting the Permit will not unreasonably interfere with or disrupt use of the Street Area as these improvements have historically been part of the Street Area. Moreover, the Street Area has the capacity to accommodate the proposed Encroachment and any other existing or foreseeable public or private facilities, and granting the Permit will not be detrimental to the public interest, safety, health or welfare or have the potential to injure the property interests of others. JMA has demonstrated its ability to maintain, repair and remove the Encroachment.

Because the Property is still in City ownership, the Encroachment Permit will not become effective until JMA acquires the Property and private improvements pursuant to the Purchase and Sale Agreement.

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

If Council approves of the ordinance and adopts the resolution per staff’s recommendation, no further action by Council will be required.

### **PUBLIC OUTREACH**

Extensive public outreach was performed to develop the City Manager’s 2008 General Fund Structural Deficit Elimination Plan. The Plan identified the Hayes Mansion as an under-performing City-owned asset that should be repositioned and returned to private ownership.

This memorandum will be posted on the City’s website for the December 11, 2018, Council agenda.

HONORABLE MAYOR AND CITY COUNCIL

November 29, 2018

**Subject: Public Right-of-Way and Public Parking Easement at 200 Edenvale Avenue**

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### **COORDINATION**

The memorandum was coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, Department of Parks, Recreation and Neighborhood Services, Office of Economic Development, the City Attorney's Office and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No Commission recommendation was associated with this action.

### **COST SUMMARY/IMPLICATIONS**

There is no purchase cost to the City for establishing City-owned property as part of the public right-of-way and public parking area and granting the Major Encroachment Permit.

### **CEQA**

Exempt, File No. PP18-098.

/s/

MATT CANO

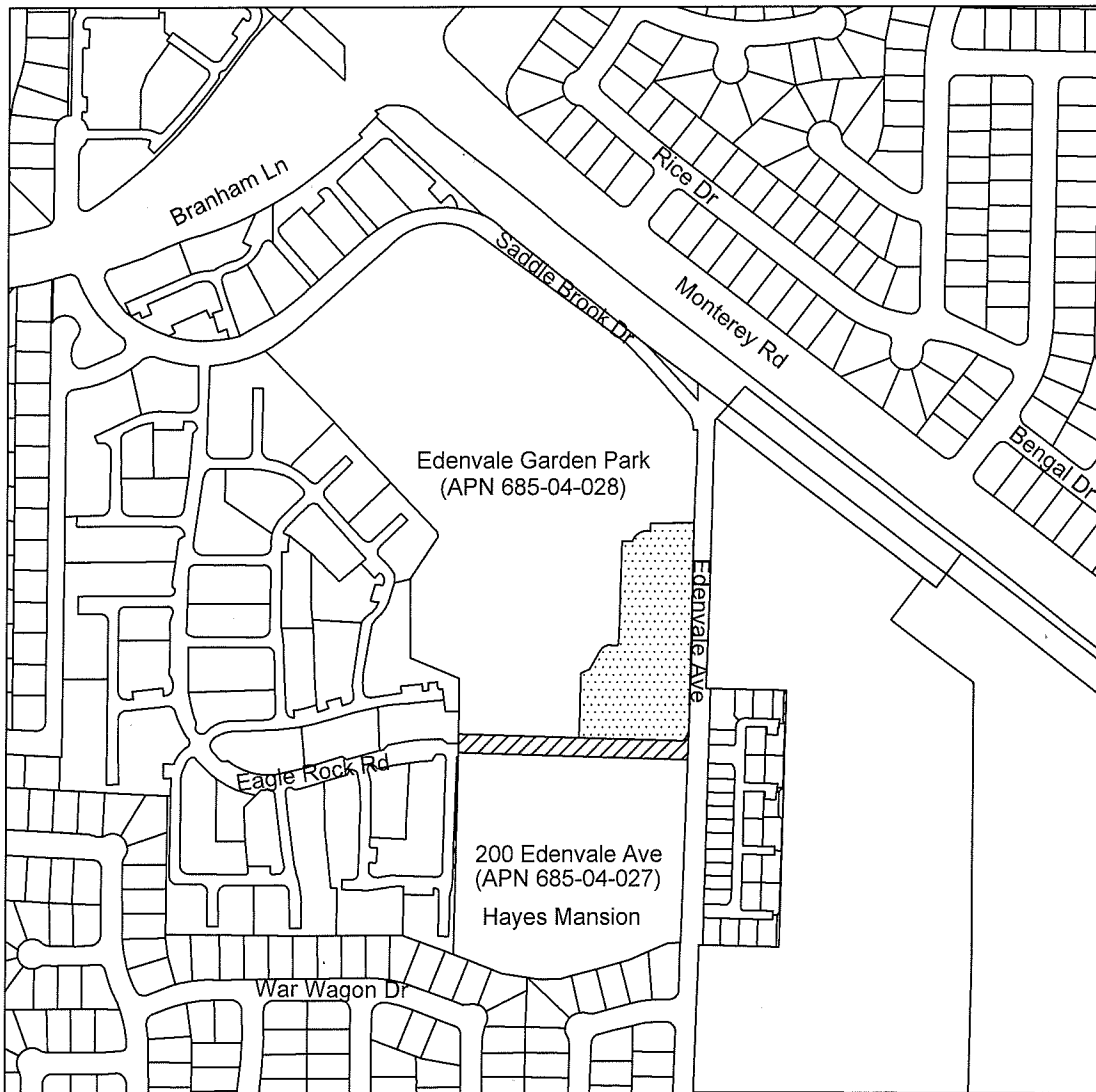
Director of Public Works

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

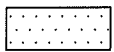
Attachment: Location Map

# LOCATION MAP

SHOWING THAT PORTION OF CITY OWNED PROPERTY NEAR 200 EDENVALE AVENUE  
TO BE DEDICATED AS PUBLIC RIGHT-OF-WAY AND PUBLIC PARKING EASEMENT



PORTION OF CITY PROPERTY TO BE DEDICATED  
AS PUBLIC RIGHT-OF-WAY  
(26,610 S.F. ±)



PORTION OF CITY PROPERTY TO BE DEDICATED  
AS PUBLIC PARKING EASEMENT  
(2.658 ACRES ±)

