



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: April 9, 2019

Approved

Date

4/10/19

COUNCIL DISTRICT: 3

**SUBJECT: SUMMARY VACATION OF A PORTION OF NORTH 4TH STREET
WITH THE RESERVATION OF A 10 SQUARE FOOT PUBLIC SERVICE
EASEMENT WITHIN THE AREA BEING VACATED**

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 summary vacation of a portion of North 4th Street with the reservation of a 10 square foot public service easement within the area being vacated;
- (b) Summarily vacating a portion of North 4th Street which has been determined to be excess and reserving a 10 square foot public service easement within the area being vacated; 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, a portion of North 4th Street ("Subject Portion") will be abandoned as a public street and will no longer constitute part of North 4th Street. A 10 square foot public service easement will be reserved within the area being vacated for a Pacific Gas & Electric anchor pole.

BACKGROUND

On May 1, 1961, a 10-foot by 181.87-foot street easement along North 4th Street was granted to the City of San José per the document recorded in Book 5220 of Official Records at Page 180. Although the street dedication widened the right-of-way to 90 feet, North 4th Street between Commercial Street and East Younger Avenue is 80 feet wide consisting of two lanes of travel in each direction with sidewalks on both sides.

On behalf of the property owners for 1040 and 1058 North 4th Street, MBA Architects submitted an application for a Site Development Permit (H17-033) and vacation to allow for on-site parking, electric gate, and fence within the Subject Portion. Prior to setting a Planning Director's Hearing for entitlement, the Subject Portion must be vacated.

ANALYSIS

Under Section 8334(a) of the California Streets and Highway Code, the City may summarily vacate "excess right-of-way of a street... not required for street or highway purposes." City staff has reviewed the subject vacation application and determined that the Subject Portion is excess right-of-way not required for street purposes. Staff has determined that vacating the Subject Portion is in compliance with the City's General Plan which currently designates North 4th Street as a city connector street. Specifically, the General Plan characterizes a city connector street as streets having 4 or 6 traffic lanes, which would accommodate moderate to high volumes of through traffic within the City with automobiles, bicycles, pedestrians, and trucks prioritized equally in the roadway. The City's current plan for this portion of North 4th Street necessitates 80 feet of right-of-way, which width can accommodate 10-foot wide sidewalks, parking on both sides of the street, and four vehicular travel lanes.

The vacation of the Subject Portion was found to be in conformance with the adopted San José 2040 General Plan during the September 26, 2018 Planning Commission Hearing. In compliance with Section 892 of the Streets and Highways Code, staff determined that the excess portion is not useful as a nonmotorized transportation facility, as these uses (i.e. bike lanes) are already accommodated within the 80-foot street cross-section.

Through written correspondence with the various utility companies that may have an interest in the Subject Portion, staff was informed that there are no utility facilities residing in the vacation area, with the exception of a Pacific Gas & Electric anchor pole supporting overhead facilities. Therefore, staff recommends that Council reserve a 2' x 5' public service easement with a total area of 10 square foot surrounding the anchor pole within the Subject Portion.

According to the title report issued by Old Republic Title Company, the property owners, Gary B. Driedger and Mary J. Driedger, or their successors, Trustees of the Driedger 2002 Revocable Trust dated 9-06-02, as amend, hold fee title to the Subject Portion.

April 9, 2019

Subject: Summary Vacation of N. 4th St. with a 10 Square Foot Public Service Easement

Page 3

EVALUATION AND FOLLOW-UP

If Council adopts the resolution summarily vacating the Subject Portion, no further action by Council will be required.

PUBLIC OUTREACH

The public was given the opportunity to comment on the proposed vacation conformance to the 2040 General Plan during the Planning Commission Hearing on September 26, 2018.

All concerned utility companies have been contacted in writing and have no objection to the proposed vacation provided that a public service easement is reserved over a portion of the area being vacated.

This memorandum will be posted to the City's website for the April 23, 2019, Council agenda.

COORDINATION

The vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, and the City Manager's Budget Office. The vacation and required resolution have been reviewed by the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

On September 26, 2018, the Planning Commission passed by vote (6-0-1) to recommend to the Council the following:

1. Consider the exemption per California Environmental Quality Act (CEQA) Guidelines Section 15035 for minor alterations in land use limitations in accordance with CEQA, and
2. Make a finding that the proposed right-of-way vacation is in conformance with the General Plan, as required by the California Streets and Highways Code Section 8313 and Section 65402 of the Government Code, and recommend that the Council adopt a resolution vacating the right-of-way.

FISCAL/POLICY ALIGNMENT

Vacating the Subject Portion is in alignment with the Council-approved Budget Strategy Expenditure Control section by eliminating a City maintenance obligation and liability.

HONORABLE MAYOR AND CITY COUNCIL

April 9, 2019

Subject: Summary Vacation of N. 4th St. with a 10 Square Foot Public Service Easement

Page 4

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees during fiscal year 2017-2018 of \$5,724 to process the subject vacation. These fees were deposited to the Public Works Development Fee Program in the General Fund.

CEQA

Categorically Exempt, File No. PP19 027, CEQA Guidelines Sections 15303, New Construction or Conversion of Small Structures, and 15305, Minor Alterations in Land Use Limitation.

/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 THE SUMMARY VACATION OF A PORTION OF
NORTH 4TH STREET WITH THE RESERVATION OF A 10 SQUARE FOOT
PUBLIC SERVICE EASEMENT WITHIN THE AREA BEING VACATED



AREA TO BE VACATED (1,819 SQ. FT.)



RESERVED PSE (10 SQ. FT.)

