



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** May 17, 2020

Approved

Date

5/21/20

**COUNCIL DISTRICT: 6**

**SUBJECT: SUMMARY VACATION OF THE 25-FOOT AND 15-FOOT SETBACK  
EASEMENTS WITHIN TRACT NO. 930**

## **RECOMMENDATION**

Adopt a resolution:

- (a) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of the 25-foot and 15-foot public easements for light and air (“Setback Easements”) located within Tract No. 930;
- (b) Summarily vacating the Setback Easements, which are excess; 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 will be abandoned as a public easement. By vacating the Setback Easements, all properties within Tract No. 930 will conform to the current San Jose Municipal Code front and side setback requirements for single family residences in zoning district R1-8 and the property owners within Tract No. 930 can construct building improvements up to the current setbacks.

## **BACKGROUND**

Richard and Katherine Brockway, property owners of 1784 Patio Drive, have submitted an application for the vacation of the 25-foot front setback easement on their property, which is Lot 70 of Tract No. 930. The Setback Easements were created by dedication on the map of Tract

No. 930, recorded on April 22, 1952 in Book 36 of Maps at page 40, of Official Records, Office of the Recorder, County of Santa Clara, and apply to all properties within the tract. The property owners have indicated their desire to construct future improvements on their property that would encroach into the Setback Easements. The Setback Easement prohibits a building from encroaching into the area.

### **ANALYSIS**

Under Section 8306(a) of the California Streets & Highways Code, the Setback Easements constitutes public service easements. Pursuant to Streets & Highways Code Section 8333(c), a public service easement may be summarily vacated if the City Council determines that it is excess, there are no other public facilities located within the easement and no in-place public utility facilities that are in use and would be affected by the vacation.

Staff has reviewed the vacation application and determined that all Setback Easements are not needed for current or prospective use and therefore are excess. 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 are no longer necessary for public use 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 through vacating all setback easements for entire subdivisions as opposed to the prior practice of vacating setback easements for individual properties. Therefore, staff recommends vacating all of the Setback Easements within Tract No. 930. 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. 930, 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 with the zoning district R1-8.

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Through County records, staff have identified the owners within Tract No. 930 of the properties subject to the Setback Easements. There are existing public utility easements within Tract No. 930 that will remain on the properties.

### **CONCLUSION**

Staff has determined that the Setback Easements are excess. Staff recommends the City Council adopt a resolution summarily vacating the Setback Easements.

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

If Council approves the resolution vacating the Setback Easements, 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.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **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 June 2, 2020 City Council agenda. 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.

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### **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.

### **COST SUMMARY/IMPLICATIONS**

The Public Works Department collected cost-recovery fees on March 3, 2020 during fiscal year 2019-2020, of \$4,472 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

### **CEQA**

Categorically Exempt, File No. ER20-094, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations

/s/

MATT CANO

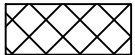
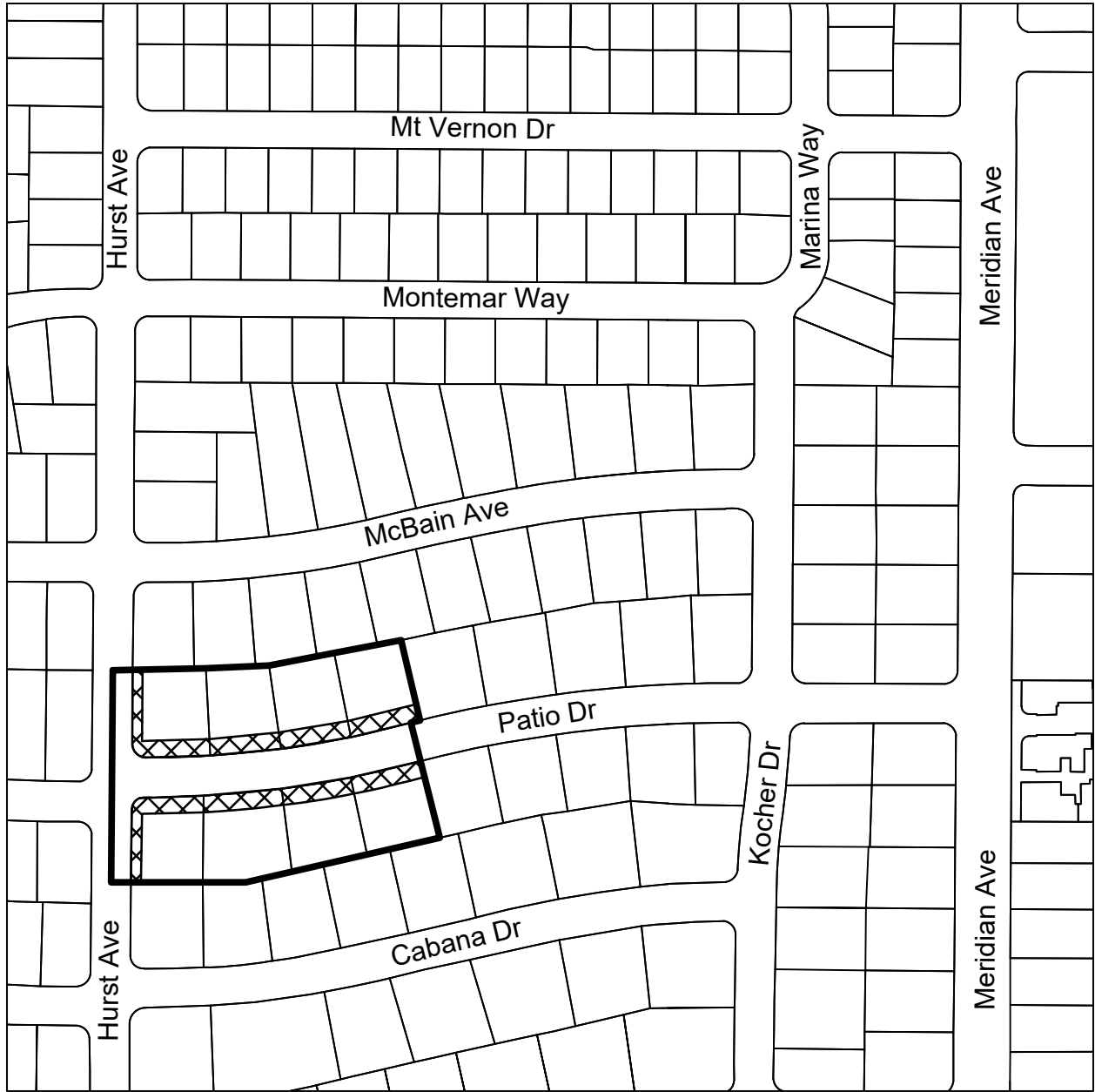
Director of Public Works

For questions please contact Matthew Loesch, Assistant Director of Public Works, at (408) 535-8300.

Attachment: Location Map

# LOCATION MAP

SHOWING THE 25-FOOT AND 15-FOOT SETBACK EASEMENTS  
WITHIN TRACT NO. 930 TO BE VACATED



AREA TO BE VACATED



BOUNDARY OF TRACT NO. 930

