



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT: STREAMLINING PUBLIC  
EASEMENT VACATION PROCESS**

**DATE:** June 8, 2020

Approved

Date

6/10/2020

## **RECOMMENDATION**

Adopt a resolution:

- a) Establishing an administrative process of setting public hearings for vacations; and
- b) Delegating to the Director of Public Works the authority to summarily vacate public service easements pursuant to the Streets and Highways Code.

## **OUTCOME**

Adopting the resolution will allow the City Manager to set public hearings through the existing Council agenda process and allow the Director of Public Works to summarily vacate public service easements pursuant to the Streets and Highways Code without Council approval. The changes are anticipated to allow development projects to proceed expeditiously by shortening the time to complete vacations and reduce the number of vacation actions Council must consider.

## **BACKGROUND**

Street and public service easement vacations related to development projects are brought before Council throughout the year for recommended approval prior to issuance of building permits for construction. Vacations are often necessary to accomplish approved land use plans. The Department of Public Works (PW) is recommending changes to streamline the vacation process to minimize staff time required to bring vacations to Council hearings and to better align with development project schedules.

Public easement vacations not in conjunction with a subdivision map are governed by the California Streets and Highways Code (Code). A vacation is defined as the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement. The Code provides that streets and public service easements may be vacated by means of either a public hearing by Council (General Vacation) or through a summary process

not requiring a public hearing (Summary Vacation). All vacations under the Streets and Highways Code require a public hearing by Council except specific categories of public easements that qualify for a summary process.

Historically, staff has brought General Vacations to Council twice, once to set a public hearing and a second time to hold the public hearing and take action on the proposed vacation. This is accomplished by bringing a resolution of intention to vacate before Council for approval. The resolution of intention to vacate sets the date of the public hearing, directs the City Clerk to publish the required notice, and directs the Director of Public Works to cause posting of notices per Code. A lead time of approximately six weeks is necessary to add the initial resolution of intention to vacate to the Council agenda. On the date of the public hearing, Council is presented with all evidence related to the proposed vacation and may adopt a resolution vacating the street or public service easement and directing the City Clerk to record the resolution with the County of Santa Clara.

Additionally, all Summary Vacation items are currently brought once before Council. A lead time of approximately six weeks is necessary to add the Summary Vacation item to the Council agenda. Although relatively faster, the processing time needed to complete a Summary Vacation negatively impacts the schedule of smaller development projects including construction of single family home additions.

## **ANALYSIS**

In order to streamline the time and costs for processing of vacations for public and private development projects, staff is proposing the below actions for General Vacations and Summary Vacations.

### **General Vacations**

General Vacations can be streamlined to better align with development project schedules by simplifying the process which sets a public hearing date and directs publishing of notices. The Code allows a legislative body's administration to set public hearings for General Vacations by establishing the date, hour, and place of the hearing and publishing notice of the proposed vacation two weeks prior to the hearing. Staff recommends adopting the administrative procedure allowed by the Code, which includes directing the City Manager to set public hearing dates and to add the item to the Council agenda, directing the City Clerk to publish required notices upon notification from PW, and directing the Director of Public Works to cause posting of notices as required by the Code. This process change for setting a public hearing and noticing eliminates the initial Council resolution of intention to vacate and associated lead time and thereby shortens the overall General Vacation process.

Establishing an administrative process of setting public hearings for General Vacations is expected to shorten the average time from 12 weeks to 6 weeks and reduce the average cost per vacation by approximately \$1,500.

### Summary Vacations

Section 8335 of the Code was amended in 2015 to provide that local agencies may delegate the authority to summarily vacate public service easements to a qualified public officer or employee of the local agency. The public officer or employee must be a qualified civil engineer or land surveyor in accordance with the Subdivision Map Act. Rather than requiring Council action to abandon the public service easement, the qualified officer or employee makes the same findings that Council would make for the vacation and records a document in accordance with the Code.

Staff believes that delegating authority for Summary Vacations of public service easements will better support development project schedules. Pursuant to staff's recommendation, the Director of Public Works, acting through a qualified public officer or employee, will be given authority to summarily vacate public service easements. Because the amendments to Section 8335 only apply to public service easements, all street vacations will continue to be brought before Council for action.

This delegation of authority for Summary Vacations of public service easements is expected to shorten the average time from 6 weeks to 3 weeks and reduce the average cost per vacation by approximately \$1,500.

### CONCLUSION

Development projects occasionally require street or easement vacations to accomplish their approved land use plans. In an effort to reduce Council agenda items and better align with development project schedules, staff recommends streamlining the vacation process. Changes include directing the City Manager to administratively set public hearings by adding vacation actions to Council agendas, directing the City Clerk to publish required notices upon notification from PW, directing the Director of Public Works to cause posting of notices, and delegating to the Director of Public Works authority to summarily vacate public service easements in accordance with the Code.

### EVALUATION AND FOLLOW-UP

No further follow-up actions with the Council are anticipated at this time.

### CLIMATE SMART SAN JOSE

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

## **PUBLIC OUTREACH**

This memorandum and proposed resolution will be posted on the City's Council Agenda website for the June 23, 2020 Council Meeting.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is required or associated with this action.

## **FISCAL/POLICY ALIGNMENT**

The proposed resolution supports the following General Plan policies and goals:

### **City Operations**

FS-1.5 Provide speed, consistency, and predictability for the land use entitlement processes while using these processes to add value and improve the quality of new development.

### **Business Growth and Retention**

IE-2.1 Maintain City government practices attuned to business needs for clear and timely use of incentives, regulations, and development entitlement processes.

## **COST SUMMARY/IMPLICATIONS**

The City's cost to bring this item before Council consists of staff time to prepare and coordinate the documents.

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**CEQA**

Not A Project, File No. PP17-008, General Procedures and Policy Making resulting in no changes to the physical environment.

/s/

MATT CANO

Director of Public Works

For questions, please contact Matt Loesch, Assistant Director, at (408) 535-8300.