

From: [Colli, Garrett J. \(Perkins Coie\)](#)
To: [Hill, Egan](#)
Cc: [Gray, Matthew S. \(Perkins Coie\)](#)
Subject: Street Vacation Resolution (4.29.21 - Google comments)
Date: Thursday, April 29, 2021 2:52:31 PM
Attachments: [Street Vacation Resolution \(4.29.21 - Google comments\).docx](#)

[External Email]

Hi Egan,

Please see attached for my redlines.

Thanks,
Garrett

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF SOUTH MONTGOMERY STREET, ~~OTTERSON STREET, DELMAS AVENUE, NORTH MONTGOMERY STREET, COTTAGE LANE, CINNABAR STREET, AUZERAIS AVENUE, ROYAL AVENUE, WEST SAN CARLOS STREET, AND SOUTH AUTUMN STREET~~ IN CONJUNCTION WITH THE DOWNTOWN WEST MIXED-USE PLAN [NTD: Each Resolution will refer to the specific street being vacated.]

WHEREAS, on [] Google (“Google” or “Project Sponsor”) submitted an application petitioning for the proposed vacation of certain streets for the Downtown West Mixed-Use Plan (“Downtown West” or “Project”); and

WHEREAS, this Resolution conditionally approving the street vacations is a companion to the following approvals relating to Downtown West: certification of the Downtown West Final Environmental Impact Report, adoption of CEQA Findings, a Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations (Resolution No. ___); City approval of an override of the Santa Clara County Airport Land Use Commission’s inconsistency determination (Resolution No. ___); General Plan amendments (Resolution No. ___); DSAP amendments (Resolution No. ___); approval of the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. ___); approval of a Planned Development Rezoning, including a General Development Plan (Ordinance No. ___); approval of a Planned Development Permit (Resolution No. ___); amendments to Title 20 of the City of San José Municipal Code (Ordinance No. ___); approval a Vesting Tentative Map (Resolution No. ___); approval of amendments to the boundaries of one Historic Landmark (San José Water Company at 374 West Santa Clara Street), and amendment to the boundaries of a second Historic Landmark (Southern Pacific Depot Historic District) (Resolutions No. ___ and ___); amendment to Historic Preservation Permit (HP16-002) (Resolution No. ___); and approval of ~~a~~ Major Encroachment Permits (Resolution No. ___); and

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WHEREAS, the Project’s proposed street network extends the existing street network and proposes improvements to east-west connectors, including West Santa Clara Street, West San Fernando Street, Park Avenue, West San Carlos Street, West Julian Street, West St. John Street (new street), West Post Street (new street), and Auzerais Avenue, to provide pedestrian and bicycle priority streets to link neighborhoods east and west of the rail corridor to enhance connections to nature, surrounding neighborhoods, and the greater Bay Area region; and

WHEREAS, development of the Project proposes the vacation of portions of ~~the South Montgomery Street following streets~~ within Downtown San José with the reservation of easements for public non-vehicular transportation, pedestrian access and utility purposes ~~as further described in Section 5: South Montgomery Street (between West San Fernando Street and Park Avenue); Otterson Street (between South Montgomery Street and proposed new Cahill Street); Delmas Avenue (between West Santa Clara Street and West San Fernando Street); North Montgomery Street (between West St. John Street and proposed new Cahill Street); Cottage Lane (between North Montgomery Street and the Peninsula Corridor Joint Powers Board rail tracks); Cinnabar Street (between proposed North Autumn Street and the Peninsula Corridor Joint Powers Board rail tracks); westerly portion of Royal Avenue between Auzerais Avenue and West San Carlos Street; southerly portion of West San Carlos Street west of Royal Avenue; westerly and easterly portions of South Montgomery Street between West San Carlos Street and Park Avenue; northerly and southerly portions of Park Avenue between South Montgomery Street and the Peninsula Corridor Joint Powers Board rail tracks; westerly portion of South Autumn Street north of West San Fernando Street; and northerly portion of Auzerais Street near the Peninsula Corridor Joint Powers Board rail tracks (together, the streets are the “Subject Property”); and [NTD: Each Resolution will reference the specific street being vacated.]~~

WHEREAS, the Project intends for the Subject Property to be utilized for non-vehicular and pedestrian purposes to be open to the public; and

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WHEREAS, pursuant to the Subdivision Map Act, the Project Sponsor proposes for the City to ~~vacate-abandon~~ certain public streets other than the Subject Property for which the Project Sponsor or the City holds fee title interest, as set forth in the Vesting Tentative Map (Resolution No. ___); and

WHEREAS, ~~neither the Project Sponsor nor~~ the City holds ~~fee title to the~~ an easement over properties underlying the Subject Property, pursuant to which the Subject Property has been historically used as a public street for vehicular, pedestrian, bicycle and other uses; and

WHEREAS, Part 3 of Division 9 of the Streets and Highways Code of the State of California (the "Code") authorizes the City Council to vacate a public street in whole or in part, including by terminating the public's right to undertake certain uses of a public street pursuant to a previously-dedicated street easement, if the City Council determines that it is unnecessary for present or prospective public street use, subject to the satisfaction of conditions specified by the City Council; and

WHEREAS, the Code also authorizes the City Council to reserve and ~~accept-except~~ from a public street vacation, public easements for non-vehicular transportation, pedestrian access, ~~and~~ utility, and other purposes if the City Council determines that such uses are in the public interest; and

WHEREAS, on May 10, 2021 notices of the proposed vacations were published and posted along the Subject Property, all in the manner prescribed by the Code; and

WHEREAS, attached to this Resolution as Exhibit "A" and incorporated herein is a map approved by the Director of the Department of Public Works on May __, 2021, entitled "MAP SHOWING THE STREET EASEMENT TO BE CONDITIONALLY VACATED WITH

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THE RESERVATION OF PUBLIC SERVICE EASEMENTS” showing the Subject Property and reserved public easements (“Map”); and

Commented [A1]: GOOGLE TO PROVIDE THE LEGAL DESCRIPTION AND PLAT MAPS SHOWING THE PROPOSED VACATED AREAS AT THE TIME OF COUNCIL APPROVAL.

WHEREAS, prior to the public hearing, the Map was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

WHEREAS, attached to this Resolution as Exhibit “B” and incorporated herein is a copy of the report, dated May __, 2021 that was submitted to the City Council setting forth the facts justifying the conditional vacation of the Subject Property and reservation of the public service easements specified in this Resolution (hereinafter “Report”); and

WHEREAS, at the public hearing, the City Council heard all persons interested in the proposed vacation and considered all evidence submitted;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The foregoing recitals are incorporated into this Resolution by reference.

SECTION 2. The City Council hereby adopts the Report and based on the Report and all other evidence submitted makes the following findings:

A. The conditional vacation of the Subject Property is necessary for the implementation of the Project as the Subject Property is proposed to be utilized as public property dedicated to non-vehicular transportation, pedestrian access ~~and~~ utility purposes, and related uses contemplated by the Project and the Code and which are inconsistent with vehicular transportation.

B. As part of the Project, the vacation of the public street easement on the Subject Property and proposed future use as non-vehicular transportation and pedestrian

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access purposes was submitted to Planning Commission on April 28, 2021, and the Project was determined to be consistent with the San José General Plan.

- C. Development of the Project requires the construction of an extensive street, bicycle, pedestrian, and trail system that is designed to integrate with existing streets in the adjacent neighborhoods and that will provide extensive alternatives for vehicular use and the Subject Property will function as an extension of the non-vehicular transportation and pedestrian system open to public use.
- D. There are public facilities located within the Subject Property.

~~E. All public utilities that have requested notice of proceedings to vacate a street have been contacted.~~

SECTION 3. The City Council makes the following conclusions based on the above findings:

- A. Upon satisfaction of the conditions set forth in Section 4 below, the Subject Property will no longer be necessary for present or prospective public street purposes and will be necessary for non-vehicular transportation, pedestrian access and utility purposes as set forth in Section 5 of this Resolution;
- B. The proposed vacations are consistent with the General Plan for the reasons set forth in Exhibit __ to Resolution No. ____.
- C. In accordance with Streets and Highways Code Section 892 and 8314, upon satisfaction of the applicable conditions, the Subject Property will be useful as a non-vehicular transportation facility and the public interest, convenience, and necessity require that the City reserve from the vacation of the Subject Property easements for non-vehicular transportation and pedestrian use as described in Section 5 of this Resolution;

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D. The public interest, convenience, and necessity require that the City reserve from the vacation of the Subject Property easements for public utility facilities as described in Section 5 of this Resolution.

SECTION 4. The vacation of the Subject Property is conditional and will not take effect until all of the following conditions have been met:

- A. **Conformance Review Approval.** The Director of PBCE has reviewed and approved a Conformance Review Application for vertical improvements and open space (pursuant to the process and standards set forth in the General Development Plan and Conformance Review Implementation Guide) for the area that includes the Subject Property;
- B. **Demonstration of Ownership.** The Project Sponsor shall have demonstrated to the City's satisfaction that neither the Project Sponsor nor the City is the fee title owner of the Subject Property (such demonstration shall be by a sworn statement duly executed by the Project Sponsor, current title report and, at the City's election, a confirmatory site inspection).
- C. **Improvement Agreement.** The Project Sponsor shall have executed a City-Private Developer Agreement and provided bonds as required therein, which agreement guarantees, among other things, that public improvements will be constructed to convert the Subject Property from a public street to a public non-vehicular and pedestrian transportation facility.

SECTION 5.

- A. After the satisfaction of the conditions set forth in Section 4, the public street easement on the Subject Property shall be vacated, reserving and accepting from the vacation on, over, under and through the Subject Property: (1) a public

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easement for non-vehicular transportation, including all rights associated with installation, maintenance and removal of associated improvements; (2) a public easement for pedestrian access, including all rights necessary for the installation of related improvements, which may include, but shall not be limited to, promenades, plazas, landscaping, street furniture (including fixed seating), kiosks, pavilions, water features, art, understory planting, outdoor programming improvements, and shade structures -[NTD: Specific types of improvements to be listed here relevant to each vacated street]; ~~and~~ (3) a public easement for utility purposes, including all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew any and all in-place public utility facilities, said public utility easements to be kept open and free from buildings and structures of any kind except irrigation systems and appurtenances thereto, lawful fences and all lawful unsupported roof overhangs; and (4) an easement for emergency vehicle access purposes. [NTD: Emergency vehicle access easement included only for South Montgomery Street Resolution.]

- B. After receiving written confirmation from both the Director of Public Works and the Office of the City Attorney that the conditions in Section 4 have been satisfied, the City Clerk is hereby directed to record a certified copy of this Resolution, including the exhibits hereto, with the Office of the Recorder for the County of Santa Clara.

- C. From and after the date this Resolution is recorded, the Subject Property will no longer constitute a public street and will constitute public easements for non-vehicular transportation, pedestrian access and utility purposes as specified in this Resolution.

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ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO

Mayor

ATTEST:

TONI J. TABER, CMC

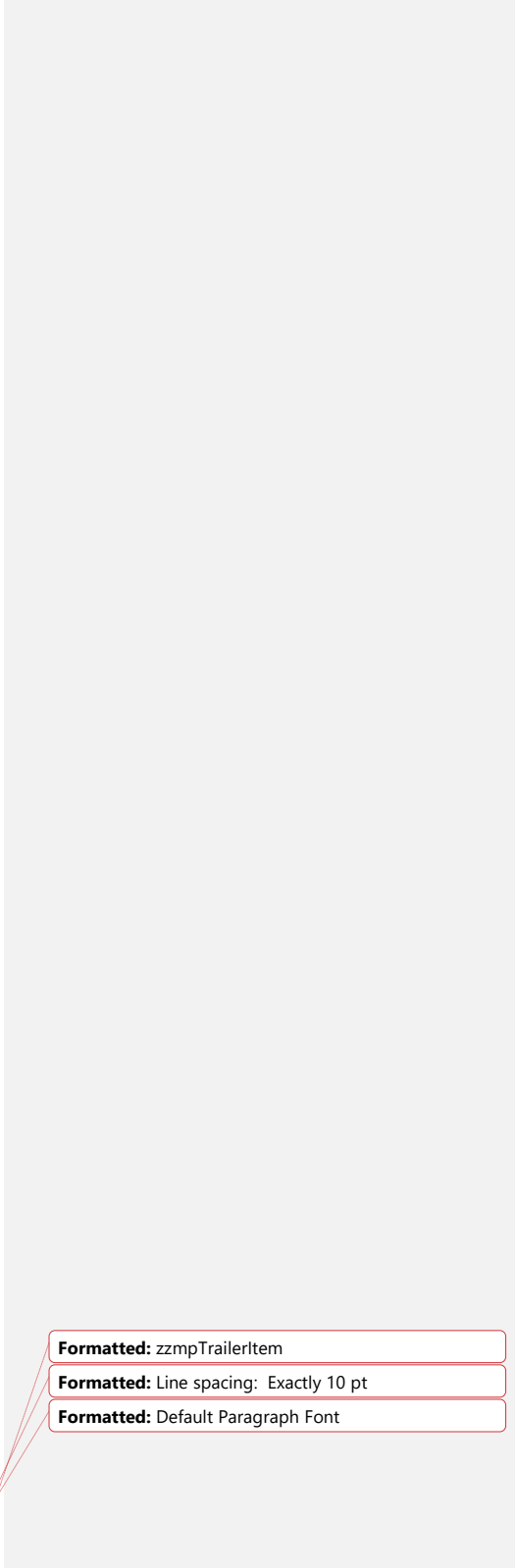
City Clerk

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Exhibit A



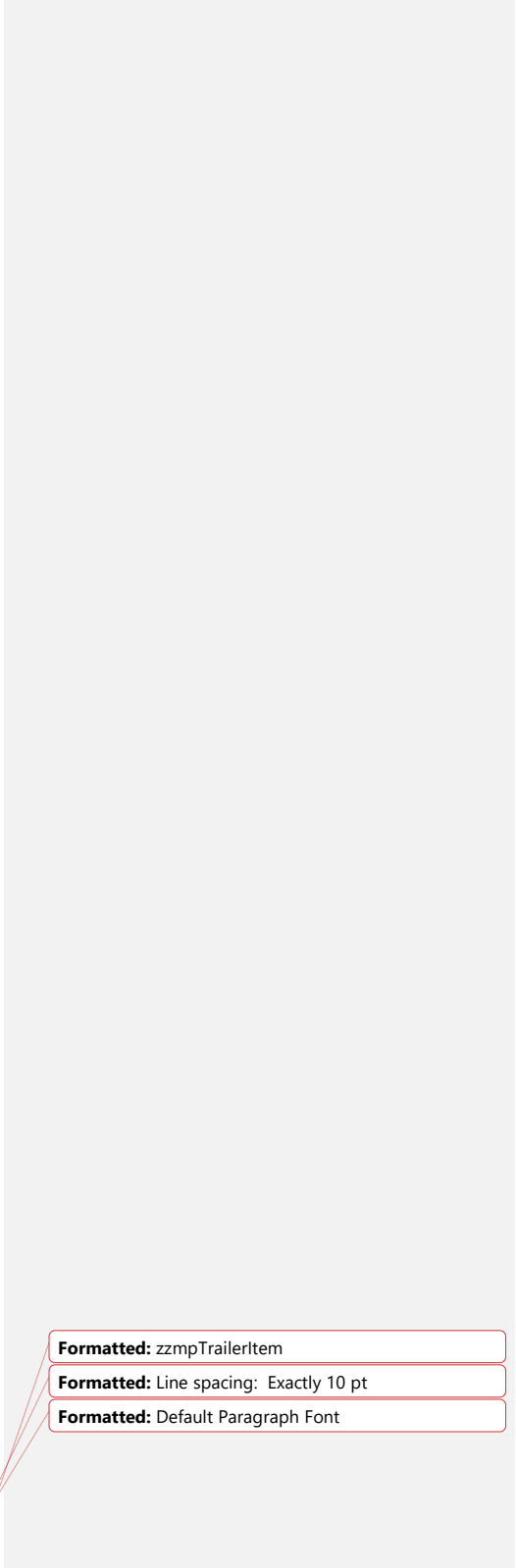
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Exhibit B



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