

From: [Hill, Egan](#)
To: [Gray, Matthew S. \(SFO\)](#); [Colli, Garrett J. \(Perkins Coie\)](#)
Subject: Street Vacation Resolutions
Date: Wednesday, May 12, 2021 6:11:00 PM
Attachments: [1819439_2.docx](#)

Matt and Garrett,

For ease of review, I'm going to send you the final versions of the conditional street vacation resolutions with signed plat maps in separate emails to follow. Attached to this email is the final, clean version of Exhibit B that will be included in each resolution.

Once you have reviewed each resolution, please let me know that it is good to go and the City will post.

Thanks.

Egan Hill

Senior Deputy City Attorney
Office of the City Attorney | City of San Jose
200 E. Santa Clara Street, 16th Floor | San Jose, CA | 95113
P: (408) 535-1912 | F: (408) 998-3131
egan.hill@sanjoseca.gov

NOTICE TO RECIPIENT: This communication is intended **only** for the person to whom it is addressed, and may be protected by law. If you receive this in error, any review, use, dissemination, distribution, or copying is strictly prohibited. Please notify us immediately of the error and delete this communication and any attached documents from your system. Thank you for your cooperation.

EXHIBIT B

Public Works' Summary of the Proposed Vacation

Since the Project documents were published for Planning Commission, the parties have determined that there are some small areas of City-controlled Right Of Way (ROW) that were intended to be included in the "Covenant Privately-Owned Publicly Accessible Open Space" but are not owned by the City or Google.

The newly-published documents include five additional resolutions that allow for conditional vacation of a portion of South Montgomery Street, Park Avenue, Otterson Street, and Cinnabar Street with the reservation of public easements over the entire area to be vacated ("Subject Portions"). On these five Subject Portions the vehicular component of the right of way will be vacated, and the bicycle and pedestrian components of the ROW will remain in place, which allows them to continue to function consistently with the proposed open space plan as defined in the DWDSG (in the event that neither the City or Google are able to acquire the underlying fee interest) (*See Str. & Hwy. § 8309; see also Martis Camp Community Association v. County of Placer*, 53 Cal. App. 5th 569, 598 (2020) (confirming a local agency's ability to terminate certain public uses of a street through a vacation while reserving other public uses and rights of access).).

The parties also have agreed that if Google is unable to acquire and manage the space as "Covenant Privately-Owned Publicly Accessible Open Space," it will still pay for the maintenance of private improvements installed within the Subject Portion for a minimum of 50 years.

The Subject Portions are currently utilized as public streets. There are existing utilities which serve the areas and also a desire to allow continued bicycle and pedestrian access. Based on this, staff recommends that if the conditional vacation is approved, that Council reserve from the vacation public easements for non-vehicular transportation and pedestrian access, utility purposes, and if applicable, emergency vehicle access over the entire areas being vacated.

As described above, the Project documents, including the General Development Plan ("GDP") and the Downtown West Design Standards and Guidelines ("DWDSG"), assumed that motorized vehicular traffic would be removed from the Subject Portions. The Project's Environmental Impact Report and related studies evaluated the removal of motorized vehicular traffic from the Subject Portions consistent with the GDP and DWDSG.

These analyses document that the Subject Portions will be unnecessary for present or prospect motorized vehicular traffic use upon the satisfaction of the conditions described in Section 4 of the Resolution and will be necessary for public use as pedestrian and bicycle-oriented spaces.

Staff recommends the reservation of certain public easements from the proposed vacation as described in Section 5 of the Resolution. These include a public easement for "non-vehicular transportation and pedestrian access purposes" including related improvements, which may include street furniture, hardscaping and landscaping and other facilities that serve the public using the public easement. For purposes of clarification, but not limitation, the following types of

EXHIBIT B

improvements are consistent with the reserved easement and may be installed in these areas subject to the Conformance Review process set forth in the Project documents:

1. street furniture, including seating and tables (both fixed and movable) and program decks;
2. landscaping, including tree groves & canopy trees and understory planting, and flex lawns;
3. public art and non-structural and removable maker spaces;
4. anchor plazas and promenades;
5. kiosks;
6. water features;
7. improvements relating to outdoor programming contemplated by the Project;
8. trellises and other shade canopy (structures);
9. improvements relating to event areas for temporary occupancy of the Subject Property; and
10. raised planter beds.