

RESOLUTION NO. 80032

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF OTTERSON STREET WITH THE RESERVATION OF PUBLIC EASEMENTS OVER THE VACATED AREA IN CONJUNCTION WITH THE DOWNTOWN WEST MIXED-USE PLAN**

**WHEREAS**, Google (“Google” or “Project Sponsor”) has petitioned the City to vacate 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. 80018); City approval of an override of the Santa Clara County Airport Land Use Commission’s inconsistency determination (Resolution No. 80019); General Plan amendments (Resolution No. 80020); DSAP amendments (Resolution No. 80021); approval of the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. 30610); approval of a Planned Development Rezoning, including a General Development Plan (Ordinance No. 30609); approval of a Planned Development Permit (Resolution No. 80022); amendments to Title 20 of the City of San José Municipal Code (Ordinance No. 30608); approval of a Vesting Tentative Map (Resolution No. 80023); approval of amendments to the historic landmark boundaries of San José Water Company at 374 West Santa Clara Street (Resolution No. 80029) and Southern Pacific Depot Historic District (Resolution No. 80028); amendment to Historic Preservation Permit (HP16-002) (Resolution No. 80027); approval of a Construction Impact Mitigation Plan (Resolution No. 80026); and approval of Major Encroachment Permits (Resolution Nos. 80024 and 80025); and

**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**, Council intends to vacate an approximately 187 square foot portion of Otterson Street with the reservation of public easements over the entire vacated area for public non-vehicular transportation, pedestrian access, and utility purposes (the "Subject Property"), constituting:

REAL PROPERTY in the City of San José, County of Santa Clara, State of California, being a portion of Otterson Street as shown on that certain Record of Survey filed for record on May 4, 2017, in Book 903 of Maps, page 44, Santa Clara County Records, described as follows:

COMMENCING at the northeasterly corner of Parcel Two as shown on said Record of Survey, being on the southerly line of Otterson Street;

Thence along said southerly line, South 87°53'28" West, 200.00 feet, to the TRUE POINT OF BEGINNING;

Thence continuing along said southerly line, South 87°53'28" West, 9.34 feet;  
Thence North 02°30'02" West, 20.00 feet, to the centerline of Otterson Street;  
Thence along said centerline, North 87°53'28" East, 9.34 feet;  
Thence South 02°30'02" East, 20.00 feet, to the TRUE POINT OF BEGINNING.

Containing 187 square feet, more or less; and

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

**WHEREAS**, pursuant to the Subdivision Map Act, the Project Sponsor proposes that the City 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. 80023); and

**WHEREAS**, the City holds 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 public 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 rights 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 except from a public street vacation, public easements for non-vehicular transportation, pedestrian access, utilities, 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 7, 2021, entitled

“MAP SHOWING THE PORTION OF OTTERSON STREET TO BE CONDITIONALLY VACATED WITH THE RESERVATION OF PUBLIC EASEMENTS” showing the Subject Property and reserved public easements (“Map”); and

**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 “Public Works’ Summary of the Proposed Vacation” that was submitted to the City Council setting forth the additional facts justifying the conditional vacation of the Subject Property and reservation of the public service easements specified in this Resolution (hereinafter “Summary”); 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 Summary and based on the Summary 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.

- 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 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.

**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 B to Resolution No. 80020 , amending the General Plan as related to the Downtown West Mixed-Use Plan.
- C. In accordance with Streets and Highways Code Sections 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.

- 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 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 an Improvement 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 excepting from the vacation on, over, under and through the Subject Property: (1) a public easement for non-vehicular transportation and pedestrian access purposes, including all rights necessary to construct, maintain, operate, modify, enlarge, replace, remove and renew improvements necessary or convenient for such public purposes, which improvements may include but shall not be limited to, street furniture, hardscaping and landscaping, restrooms and other facilities that serve the public using the easement; and (2) 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.
  
- 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 25th day of May, 2021, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA,  
FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ,  
LICCARDO.

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



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SAM LICCARDO  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk

# MAP

SHOWING THE PORTION OF OTTERSON STREET TO BE CONDITIONALLY  
VACATED WITH THE RESERVATION OF PUBLIC EASEMENTS



AREA TO BE VACATED

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS 25<sup>th</sup> DAY OF  
MAY 2021, AND APPROVED BY SAID CITY COUNCIL THIS 25<sup>th</sup> DAY OF  
MAY 2021 BY RESOLUTION NUMBER 80032

CITY CLERK, CITY OF SAN JOSE

for MATT CANO

DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

APPROVED THIS 7TH DAY OF MAY 2021



## 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 set forth 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.