RESOLUTION NO. ______

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF MERIDIAN AVENUE, SOUTH OF FRUITDALE AVENUE, AND RESERVING A PUBLIC SERVICE EASEMENT OVER THE VACATED AREA

WHEREAS, the conditional vacation of the 2,406 square feet portion of Meridian Avenue described in Section 3 of this Resolution (“Subject Portion”) is being conducted pursuant to Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California; and

WHEREAS, on November 8, 2016, the City Council adopted Resolution No. 77965 (“Resolution of Intention”) declaring its intention to vacate the street easement over the Subject Portion; and

WHEREAS, the Resolution of Intention gave notice that on Tuesday, the 29th day of November, 2016 at 1:30 p.m., in the Council Chambers of the City Council, in the City Hall of the City of San José, the Council would hear any and all persons interested in or objecting to the vacation of the Subject Portion; and

WHEREAS, the Resolution of Intention giving notice of the date, time and place of the public hearing was published in the manner prescribed by law; and

WHEREAS, prior to the public hearing a plat map was approved by the Director of Public Works on October 24, 2016, entitled “Plat Map Showing that Portion of Meridian Avenue to be Vacated with Reservation of a Public Service Easement” (“Plat Map”); and

WHEREAS, prior to the public hearing, the Plat Map was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and
WHEREAS, on November 29, 2016, at 1:30 p.m. in the City Council chambers, the City Council heard any and all persons interested in or objecting to the proposed vacation of the Subject Portion, and received and considered all evidence submitted; and

WHEREAS, at the public hearing on the vacation of the Subject Portion, the City Council had before it a report from the Director of Public Works to the City Council dated November 7, 2016 (“Report”), identified as “EXHIBIT A” and incorporated herein, and the Plat Map, identified as “EXHIBIT B” and incorporated herein;

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

SECTION 1. The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:

A. This vacation is in conjunction with the approved Conditional Use Permit (CP15-072), which requires the partial realignment of Meridian Avenue so that the Subject Portion will no longer be used for vehicular travel; and

B. Conditional Use Permit (CP15-072), which includes the proposed street realignment, was approved by Planning Commission on February 10, 2016, and the project was determined to be consistent with the San José General Plan; and

C. Rights-of-way bordering the Subject Portion are available for nonmotorized transportation; and

D. There are in-place public utility facilities located within the Subject Portion; and
E. All affected public utilities have been contacted and have no objections to the proposed vacation so long as a public service easement is reserved over the entire Subject Portion.

SECTION 2. The City Council makes the following conclusions based upon the above findings:

A. Following the City’s acceptance of the realignment improvements required by Conditional Use Permit (CP15-072), the Subject Portion will be unnecessary for present or prospective public street purposes; and

B. The proposed vacation is consistent with the City’s General Plan; and

C. The Subject Portion is unnecessary for nonmotorized transportation as bordering rights-of-way are more suitable for such transportation; and

D. The public convenience and necessity requires the reservation of a public service easement over the Subject Portion.

SECTION 3. Based on the above stated findings and conclusions, and subject to the condition precedent set forth in Section 4 herein, the City Council hereby vacates the portion of Meridian Avenue with a reservation of a public service easement on, over and beneath the subject area, as depicted on the Plat Map and hereinafter described, for the purposes of constructing, maintaining, operating, replacing, removing or renewing the existing and any future public facilities located thereon:

The portion of the street proposed to be vacated and the public service easement to be reserved, are all that real property situated in the City of San José described as follows:
ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT DEED OF RIGHT OF WAY GRANTED BY BENNY DENISE AND SARA DENISE TO THE COUNTY OF SANTA CLARA AS SAID DEED WAS RECORDED FEBRUARY 16, 1960 IN BOOK 4696 AT PAGE 186, OFFICIAL RECORDS OF SANTA CLARA COUNTY, ALSO BEING A PORTION OF THAT DEED OF RIGHT OF WAY GRANTED BY BENNY DENISE AND SARA DENISE TO THE COUNTY OF SANTA CLARA AS SAID DEED WAS RECORDED SEPTEMBER 17, 1959 IN BOOK 4153 AT PAGE 649, OFFICIAL RECORDS OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:
BEGINNING AT THE SOUTHWEST CORNER OF THAT 0.4623 ACRE PARCEL OF LAND AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED SEPTEMBER 17, 1959 IN BOOK 112 OF MAPS AT PAGE 11, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF THAT 0.377 ACRE PARCEL OF LAND SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED JANUARY 7, 1960 IN BOOK 115 OF MAPS AT PAGE 30, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID CORNERS LYING ON THE EASTERLY LINE OF MERIDIAN AVENUE (53 FOOT HALF STREET);

THENCE NORTH ALONG THE WESTERLY LINE OF SAID PARCEL AND SAID EASTERLY LINE OF MERIDIAN AVENUE 135.00 FEET TO THE SOUTHWEST CORNER OF THAT LAND DESCRIBED IN THE DEED OF RIGHT OF WAY FROM BENNY DENICE AND SARA DENICE TO THE COUNTY OF SANTA CLARA RECORDED AUGUST 19, 1958 AS BOOK 4153, PAGE 649 OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE CONTINUING ALONG THE AFOREMENTIONED LINES ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET THROUGH A CENTRAL ANGLE OF 43° 42' 37" AN ARC LENGTH OF 15.26 FEET;

THENCE LEAVING SAID EASTERLY LINE OF MERIDIAN AVENUE AND THE WESTERLY LINE OF SAID PARCEL SOUTH 75° 29' 26" WEST 20.69 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 25.00 FEET THROUGH A CENTRAL ANGLE OF 13° 35' 43" AN ARC LENGTH OF 5.93 FEET TO A POINT ON A LINE PARALLEL TO AND DISTANT 20.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF SAID PARCEL;

THENCE SOUTH ALONG SAID PARALLEL LINE 76.94 FEET; THENCE LEAVING SAID PARALLEL LINE SOUTH 14° 20' 03" EAST 66.64 FEET TO A POINT ON THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID PARCEL;

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Council Agenda: 11-29-16
Item Number: 4.3
DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sjoseca.gov for final document.
THENCE ALONG SAID PROLONGATION NORTH 89° 42' 30" EAST 3.50 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 2,382.4 SQUARE FEET (0.05 ACRES), MORE OR LESS.

PARCEL 2:
BEGINNING AT THE NORTHWEST CORNER OF THAT 0.377 ACRE PARCEL OF LAND AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED JANUARY 7, 1960 IN BOOK 115 OF MAPS AT PAGE 30, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF THAT 0.4623 ACRE PARCEL OF LAND AS SAID PARCEL IS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED SEPTEMBER 17, 1959 IN BOOK 112 OF MAPS AT PAGE 11, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, SAID CORNERS LYING ON THE EASTERLY LINE OF MERIDIAN AVENUE (53 FOOT HALF STREET);

THENCE SOUTH ALONG SAID EASTERLY LINE OF MERIDIAN AVENUE AND THE WESTERLY LINE OF SAID PARCEL 13.72 FEET;

THENCE LEAVING SAID EASTERLY LINE OF MERIDIAN AVENUE AND THE WESTERLY LINE OF SAID PARCEL NORTH 14° 20' 03" WEST 14.14 FEET TO A POINT ON THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL;

THENCE ALONG SAID PROLONGATION NORTH 89° 42' 30" EAST 3.50 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 24.0 SQUARE FEET, MORE OR LESS.

SECTION 4. This vacation and reservation of a public service easement is conditioned on, and will not take effect until, the City records a Notice of Completion for public improvement permit number 16-108228 (3-11335) with the Office of the Recorder for the County of Santa Clara.

SECTION 5. 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.
SECTION 6. From and after the date the Notice of Completion for public improvement number 16-108228 (3-11335) is recorded, the Subject Portion will no longer constitute a public street and will constitute a public service easement.

ADOPTED this _____ day of __________, 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

__________________________
SAM LICCARDO
Mayor

ATTEST:

__________________________
TONI J. TABER, CMC
City Clerk
SUBJECT: VACATION OF A PORTION OF MERIDIAN AVENUE SOUTH OF FRUITDALE AVENUE

RECOMMENDATION

Conduct a public hearing and adopt a resolution:

1. Approving the report of the Director of Public Works setting forth the facts justifying the vacation of a portion of Meridian Avenue, south of Fruitdale Avenue with the reservation of a public service easement (“PSE”) over the entire area being vacated;

2. Conditionally vacating the approximately 2,406 square feet portion of Meridian Avenue which is unnecessary for present or prospective public use with the reservation of the PSE; and

3. 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 portion of Meridian Avenue will be conditionally vacated with reservation of a PSE over the subject area and the adjoining property will be able to develop the vacated area consistent with the PSE and approved Planning permit for the adjoining property.
BACKGROUND

Denice California Properties, LLC has submitted an application for the vacation of a portion of Meridian Avenue, south of Fruitdale Avenue (see map attached). The area proposed for vacation is currently a public sidewalk and roadway consisting of a right-turn lane. This proposed vacation will support the redevelopment of a gas station which recently received a Conditional Use Permit (CP15-072) to allow for the construction of a convenience store and drive-through self-service car wash on a 0.46 gross acre site located at 900 Meridian Avenue. The vacated area is proposed for inclusion into the proposed site plan for the commercial development.

The street easements which originally created the portion of the subject right of way were dedicated to the County of Santa Clara for the purpose of street widening of Meridian Avenue through two deeds of right of way. These two deeds were recorded on August 19, 1958 in Book 4153, Pages 649 to 650 and on February 16, 1960 in Book 4696, Pages 182 to 188 of Official Records, Office of the Recorder, County of Santa Clara. Upon annexation of the street and surrounding areas by the City of San José on December 31, 1980, these easements became City rights of way.

ANALYSIS

Staff has determined that this portion of Meridian Avenue is no longer needed for public street purposes. The proposed vacation, which is approximately 2,406 square feet in size, will allow for the partial realignment of Meridian Avenue by eliminating the free running right-turn lane onto eastbound Fruitdale Avenue. This existing street corner will be physically modified to extend the sidewalk further into the street. The improvement is a condition of approval for the above-mentioned Conditional Use Permit (CP15-072) and will improve pedestrian and bicycle safety by reducing the crossing distance at the intersection. The City has entered into a City-Private Developer Agreement (“Agreement”) which requires the completion of the above-mentioned improvement. As this improvement of Meridian Avenue has not occurred yet, the right of way that is proposed to be vacated must remain until the public improvements are complete and the Agreement satisfied. When the public improvements are completed to the City’s satisfaction, staff will record a Notice of Completion with the County of Santa Clara. Included with the proposed resolution of vacation for Council approval is a provision that requires that a Notice of Completion must be recorded for the vacation to be complete.

The title report for this subject area, issued by First American Title Company, indicates that Denice California Properties, LLC holds fee ownership to the area proposed for vacation. All concerned utility companies have been contacted in writing and have no objection to the proposed vacation provided that a PSE is reserved over the entire area proposed for vacation as there are existing utilities that will remain.

EVALUATION AND FOLLOW-UP
If Council adopts the resolution conditionally vacating a portion of Meridian Avenue with reservation of a PSE, no further action by City Council will be required. As stated above, included within the Council resolution is a provision that upon completion of the required public improvements, a Notice of Completion will be recorded by the City at the County of Santa Clara and this action will effectuate the vacation of the subject portion of Meridian Avenue.

PUBLIC OUTREACH/INTEREST

The public was given the opportunity to comment on the proposed development and project site plan, with the inclusion of the proposed vacation area, during the entitlement process for CP15-072. Additionally, CP15-072 was also heard at the Planning Commission Hearing on February 10, 2016.

All concerned utility companies have been contacted in writing and have no objection to the proposed vacation provided that a public service easement is reserved over the entire area being vacated.

This memorandum will be posted to the City’s website for the November 29, 2016 Council agenda.

COORDINATION

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Department of Transportation, and the City Manager’s Budget Office. The resolution of vacation has been reviewed by the City Attorney’s Office.

COMMISSION RECOMMENDATION

This proposed vacation was included as part of the site plan for the Conditional Use Permit (CP15-072) for the redevelopment of the adjacent gas station at 900 Meridian Avenue. On February 10, 2016, the Planning Commission approved CP15-072 with a vote of 6-0-1.

FISCAL/POLICY ALIGNMENT

Vacating the subject portion of Meridian Avenue is in alignment with the Council-approved Budget Strategy Expenditure Control section by eliminating a City maintenance obligation and liability.
COST SUMMARY/ IMPLICATIONS

The Public Works Department collected cost-recovery fees in 2015-2016 of $4,612.00 to process this street vacation. These fees were deposited into the Public Works Department Services Fee Fund (Fund 001).

CEQA

Statement of Exemption (DPW File No. 3-11335)

/s/

BARRY NG
Director of Public Works

For questions please contact Michael Liw, Deputy Director of Public Works, at 535-8300.

Attachment
PLAT MAP
SHOWING THAT PORTION OF MERIDIAN AVENUE TO BE VACATED
WITH RESERVATION OF A PUBLIC SERVICE EASEMENT

AREA TO BE VACATED

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS _____ DAY OF
_____________________, AND APPROVED BY SAID CITY COUNCIL THIS _____ DAY OF
_____________________

BY RESOLUTION NUMBER

CITY CLERK, CITY OF SAN JOSE

APPROVED THIS _____ DAY OF ________________

BARRY NG
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

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