RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING A PORTION OF THE NORTHEASTERLY CORNER OF NORTH FOURTH STREET AND EAST SANTA CLARA STREET

WHEREAS, subdivision (a) of Section 8334 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate excess right-of-way of a street not required for street purposes if there are no in-place public utility facilities that are in use and would be affected by the vacation; and

WHEREAS, the City Council intends to summarily vacate a portion of the northeasterly corner of North Fourth Street and East Santa Clara Street constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as follows (“Property”):

BEING A PORTION OF EAST SANTA CLARA STREET AND NORTH FOURTH STREET AS SAID STREETS ARE SHOWN ON THAT CERTAIN MAP ENTITLED "CITY OF SAN JOSE, COPIED FROM THE ORIGINAL MAP DRAWN BY SHERMAN DAY, CIVIL ENGINEER", FILED FOR RECORD IN BOOK "A" OF MAPS AT PAGES 72 AND 73 IN THE OFFICE OF THE RECORDEER OF THE COUNTY OF SANTA CLARA, MORE PARTICULARLY DESCRIBED AS follows;

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH FIFTH STREET, BEING 100.00 FEET WIDE, AND THE NORTHEASTERLY RIGHT OF WAY LINE OF EAST SANTA CLARA STREET, BEING 100.00 FEET WIDE;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 60°06'58" WEST, 255.82 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, BEING ALSO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°59'05", AN ARC LENGTH OF 31.41 FEET TO THE NORTHEASTERLY LINE OF NORTH FOURTH STREET, BEING 80.00 FEET WIDE;

THENCE SOUTHEASTERLY LEAVING SAID NORTHEASTERLY LINE, SOUTH 29°53'56" WEST, 20.00 FEET;

THENCE NORTH 60°06'58" EAST, 20.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 86 SQUARE FEET MORE OR LESS.
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 April 3, 2017 entitled “Plat Map Showing that Portion of the Northeasterly Corner of North Fourth Street and East Santa Clara Street to be Vacated” showing the Property that the City Council intends to summarily vacate; and

WHEREAS, attached to this Resolution as Exhibit “B” and incorporated herein is a copy of the report, dated May 1, 2017, that the Director of the Department of Public Works submitted to the City Council setting forth the facts justifying the summary vacation of the Property (hereinafter “Report”);

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

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

A. The Property is not being used for vehicular or pedestrian through traffic, and the City has no plans to use the Property for vehicular or pedestrian through traffic in the future; and

B. Nonmotorized transportation uses remain available along bordering streets; and

C. This vacation is related to a street alignment project of a minor nature; and

C. There are no in-place public utility facilities that are in use and would be affected by the vacation, and all affected public utilities have been contacted and have no objections to the proposed vacation.

SECTION 2. The City Council makes the following conclusions and finding based upon an analysis of the above facts:

A. The Property is excess right-of-way of a street not required for street purposes; and

B. Pursuant to Section 892 of the Streets and Highways Code of the State of California, the Property is not useful as a nonmotorized transportation facility; and

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

D. The public convenience and necessity does not require the reservation of a public service easement.
SECTION 3. Based on the above stated facts, conclusions and findings, the City Council does hereby summarily vacate the Property.

SECTION 4. 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 5. From and after the date this Resolution is recorded, the Property will no longer constitute a public street.

ADOPTED this ______ day of __________, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

________________________
SAM LICCARDO
Mayor

ATTEST:

________________________
TONI J. TABER, CMC
City Clerk
PLAT MAP

SHOWING THE PORTION OF THE NORTH EASTERLY CORNER OF NORTH FOURTH STREET AND EAST SANTA CLARA STREET TO BE VACATED

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

[Signature]

APPROVED THIS 3RD DAY OF APRIL 2017

BARRY NG
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

NORTH FIFTH STREET
(100' RIGHT OF WAY) (BOOK 797 OF MAPS, PAGES 11-12)

POINT OF COMMENCEMENT

SJSC PROPERTIES, LLC
GRANT DEED
DOC. NO. 1206425

NORTH FOURTH STREET
(80' RIGHT OF WAY) (BOOK 797 OF MAPS, PAGES 11-12)
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: May 1, 2017

RECOMMENDATION

Adopt a resolution:

1. Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of 86 square feet of right of way at the northeasterly corner of North Fourth Street and East Santa Clara Street (“Subject Portion”);

2. Summarily vacating the Subject Portion, which is excess right of way not needed for street purposes; 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 Subject Portion will be abandoned as a public street and will no longer constitute part of North Fourth Street and East Santa Clara Street.

BACKGROUND

On June 16, 1977 a Corporation Grant Deed was recorded in Book C921 at page 578, of Official Records, Office of the Recorder, County of Santa Clara as document number 5688124. This deed granted fee title ownership of the Subject Portion from California Federal Savings and Loan Association to the City of San Jose.
On March 15, 2017 the City approved a Special Use Permit (SP17-009) for the development of two 28-story residential towers on a 1.4 acre site at the northeast corner of North Fourth Street and East Santa Clara Street as shown in the attached location map. Specifically, the project will construct 298 residential units in the west tower and 312 residential units in the east tower, allow 6 commercial condominiums which includes approximately 14,381 square feet of ground floor commercial uses and up to 24,693 square feet of flex/office space. Included within the project scope are public improvements to construct a 12-foot wide sidewalk on North Fourth Street, a 20-foot sidewalk on East Santa Clara Street, and a 37-foot wide sidewalk on North Fifth Street. Additionally, the project will complete traffic signal modifications at the intersections of North Fourth Street and East Santa Clara Street and North Fifth Street and East Santa Clara Street. These street sections conform to the City’s General Plan and Downtown Master Plan for North Fourth Street, North Fifth Street and East Santa Clara Street. As a result of these improvements, there will be a remainder of 86 square foot right-of-way behind the public sidewalk which will be excess right-of-way and is the subject of this proposed vacation.

SJSC Properties, LLC(SJSC), as the adjacent property owner, has submitted an application for the vacation of the excess right-of-way at the northeasterly corner of North Fourth Street and East Santa Clara Street. The subject area is intended to be included within the approved mixed use development project.

ANALYSIS

Pursuant to the Streets & Highways Code Sections 8334 and 8334.5, a portion of a right of way not required for street purposes may be summarily vacated if the City Council determines that it is excess and there are no in-place public utility facilities in use that would be affected by the vacation.

City staff has reviewed the subject vacation application and concurs with SJSC’s proposal to vacate the excess right of way. Staff has determined that the Subject Portion is currently not being used for street purposes as it has been enclosed with a fence on the adjacent property, and with the construction of the sidewalk improvements conditioned with the development, it is no longer needed for prospective street purposes. In addition, in compliance with Section 892 of the Streets and Highways Code of the State of California, staff has also determined that the excess portion is not useful as a nonmotorized transportation facility as these uses (i.e. sidewalks, bike lanes) are already available along the bordering streets which are more suitable for such transportation. Furthermore, the area proposed for vacation does not contain any in-place public utility facilities per written correspondence from the various public utility companies. Lastly, the vacation of the Subject Portion is exempt from the General Plan consistency finding requirements of Government Code section 65402 as the subject vacation is for the purpose of a street alignment that is of a minor nature.
According to the title report issued by Old Republic Title Company, the City holds fee title to the Subject Portion proposed for vacation. Therefore, concurrent with the proposed vacation, Council will also be asked, via a separate memorandum from the Office of Economic Development, to approve an agreement authorizing the conveyance of fee interest of the subject area to SJSC for just compensation through a purchase and sale agreement.

**EVALUATION AND FOLLOW-UP**

If Council adopts the resolution summarily vacating the Subject Portion, no further action by the Council will be required with the exception of the above-mentioned purchase and sale agreement.

**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 as part of the Planning permit review and approval process.

All concerned utility companies have been contacted in writing and have no objection to the proposed vacation and have not requested any reservation of a public service easement as there are no facilities in the area proposed for vacation.

This memorandum will be posted to the City’s website for the May 23, 2017 Council agenda.

**COORDINATION**

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

**COMMISSION RECOMMENDATION**

No commission recommendation or input is required or associated with this action.
COST SUMMARY/ IMPLICATIONS

The Public Works Department collected cost-recovery fees on June 26, 2016 during Fiscal Year 2015-2016 of $5,920 to process the subject vacation. These fees were deposited to the Public Works Development Fee Program appropriation in the General Fund (Fund 001).

CEQA

Addendum to the Downtown Strategy 2000 EIR (Resolution No.72767), the Envision San Jose 2040 General Plan (Resolution No. 76041) and the Envision San Jose 2040 General Plan Supplemental EIR (Resolution No. 77617).

BARRY NG
Director of Public Works

For questions please contact Michael Liw, Deputy Director, at 408-535-6835.

Attachment