Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: July 17, 2017

Approved

Date 7/20/17

COUNCIL DISTRICT: 3

SUBJECT: CONDITIONAL VACATION OF A PORTION OF OLD WEST JULIAN STREET BETWEEN NORTH AUTUMN STREET AND AUTUMN PARKWAY WITH THE RESERVATION OF PUBLIC SERVICE EASEMENTS OVER THE AREA VACATED

RECOMMENDATION

Adopt a resolution of intention to conditionally vacate a portion of Old West Julian Street between North Autumn Street and Autumn Parkway with the reservation of public service easements over the entire area being conditionally vacated and set a Public Hearing on August 29, 2017 at 1:30 p.m.

OUTCOME

Council adopts a resolution of intention to conditionally vacate a portion of Old West Julian Street between North Autumn Street and Autumn Parkway ("Subject Portion") with the reservation of public service easements over the entire area being conditionally vacated and set a public hearing on August 29, 2017 at 1:30 p.m. for consideration of the adoption of a resolution conditionally vacating the right-of-way. By conditionally vacating the Subject Portion, Council will abandon the public street after the satisfaction of the conditions, which will render the right-of-way unnecessary for public street purposes.

BACKGROUND

Mike Akatiff of Pacific Coast Cycle Corporation ("PCCC") has submitted an application for the vacation of the Subject Portion (see attached location map). With the exception of a small parcel owned by the Successor Agency to the Redevelopment Agency (SARA), PCCC owns all parcels abutting Old West Julian Street between North Autumn Street and Autumn Parkway, but there
are tenants and/or third party businesses operating on certain of the parcels abutting Old West Julian Street. The Subject Portion proposed for conditional vacation is currently utilized as a 60-foot wide public street and contains two separate parcels, depicted as Lot 1 and Lot 2 on the attached location map.

The City holds fee ownership to Lot 1 which comprises the majority of Old West Julian Street between North Autumn Street and Autumn Parkway. On January 11, 1870, Old West Julian Street, a 60-foot right-of-way, was sold to the City by Charles B. Polhemus. The property sale transaction was recorded in Book 15, of Deeds, at Pages 599-600, of Official Records, Office of the Recorder, County of Santa Clara.

PCCC holds fee ownership to Lot 2, a small triangular portion immediately east of North Autumn Street and south of Old West Julian Street, per the submitted title report. While there are no records that show public right-of-way exists over Lot 2, this area is currently utilized as a public street and has been established as public right-of-way through public use.

In May 2017, the City opened Autumn Parkway between Coleman Avenue to W. Julian Street to public access. The completion of Autumn Parkway Extension Project, was identified in the City’s Downtown Strategy 2000 (“Strategy”) as a necessary mitigation measure to serve the projected traffic resulting from Downtown land use intensification approved by the Strategy. As currently constructed, the Subject Portion does not connect to the newly constructed Autumn Parkway. Consequently, the Subject Portion provides only public access to the adjacent parcels owned by PCCC and a small parcel owned by SARA. SARA is in the process of transferring title of the small parcel to PCCC. If the sale of the small parcel from SARA to PCCC is completed, PCCC will remain the only property owner with public access from the Subject Portion.

Of importance to the City is that the proposed vacation does not impair the access rights of property owners (other than the applicant) or other persons or entities using properties served by the public street. Because SARA owns an abutting parcel and there currently are tenants operating on properties that use Old West Julian Street for public street access, staff is recommending that Council condition the recordation of this proposed vacation upon both of the following: 1) the City’s approval of a land use permit for the development of all of the above mentioned PCCC and SARA parcels, and 2) recordation of a City-approved subdivision map that results in all legal parcels within the subdivision having adequate access to a public street. On June 22, 2017, the City received a comprehensive preliminary review application (PRE17-116) to consolidate 24 parcels into 3 parcels for development and demolish existing industrial buildings to construct three new 6-story commercial buildings totaling 1,000,000 square feet of office space and below-grade parking. The Subject Portion and private properties referenced above are included within the proposed project boundary. Additionally, staff has been told that PCCC intends to file for planning permits to consolidate parcels for a future development.
On June 27, 2017, the City Council adopted a resolution which declared the Council’s intention to vacate the Subject Portion after the above referenced conditions had been satisfied. The resolution also approved a map showing the Subject Portion to be vacated, set a public hearing for August 8, 2017 at 1:30 p.m., and directed the Director of Public Works to post the site with the Notice of Vacation.

Since the June 27, 2017 Council meeting, staff has been meeting with the applicant to discuss the proposed conditional vacation. In particular, the applicant has proposed an alternative condition in which the vacation would be conditional upon: 1) the applicant demonstrating to the City’s satisfaction that with respect to each of the above-mentioned parcels, the owner has sole ownership and possession of the parcel and that no other persons or entities have a legal interest therein and/or that the parcel has adequate public street access other than via Old West Julian Street, and 2) the property owner executing an agreement acceptable to the City that indemnifies and holds the City harmless from any claims arising out of or related to the City’s vacation. Staff expressed concerns with respect to the alternative condition in their meetings with the applicant, in particular that it might impact existing businesses operating on the affected properties. Ultimately, however, this is the property owner’s decision and staff does not believe there are any other reasons that would preclude Council’s consideration of the alternative condition. As the above mentioned June 27, 2017 Council approved resolution did not include this alternative condition, the original vacation proceedings must be restarted. Consequently, staff will drop the original August 8, 2017 public hearing for the vacation and will replace the item with this proposal.

ANALYSIS

The Subject Portion is 12,903 square feet in size and is currently utilized as a public street. There is an existing 30-inch public sanitary sewer and a 10-inch storm sewer in the Subject Portion which serve large areas within the Diridon Station Area Plan and must remain. There also are above-grade utility facilities for which a public service easement will be reserved. Additionally, all concerned utility companies have been contacted in writing and have no objections to the proposed vacation provided a public service easement is reserved over the entire area being vacated. Based on this information, staff recommends that if the conditional vacation is approved, that Council reserve from the vacation public service easements over the entire area being vacated for these above- and below-grade public facilities to remain in service.

As mentioned previously, there are several parcels and businesses that currently obtain public street access over the Subject Portion. Because the proposed vacation would impair public street access to these parcels, the vacation will be conditional on the following: 1) the City’s approval of a land use permit for the development of all of the above mentioned PCCC and SARA parcels, and recordation of a City-approved subdivision map that results in all legal parcels within the subdivision having adequate access to a public street; or in the alternative 2) that the applicant demonstrate to the City’s satisfaction that with respect to each of the above-mentioned parcels,
the owner has sole ownership and possession of the parcel and that no other persons or entities have a legal interest therein and/or that the parcel has adequate public street access other than via Old West Julian Street, and the property owner executes an agreement acceptable to the City that indemnifies and holds the City harmless from any claims arising out of or related to the City's vacation of the Subject Property.

Staff has determined that, after eliminating any street access issues, the area proposed for vacation will no longer be needed for public street purposes as it does not provide a necessary public thoroughfare and all parcels served by Old West Julian Street would be under single ownership and exclusive possession of the applicant. Furthermore, in compliance with Section 892 of the California Streets and Highways Code, staff has also determined that the Subject Portion is not useful as a non-motorized transportation facility, as the Subject Portion does not connect to Autumn Parkway and there are more appropriate pathways on adjacent existing streets. Finally, this portion of Old West Julian Street is not designated as a General Plan street due to the minor nature of this roadway and staff finds that this vacation is consistent with the Envision San José 2040 General Plan.

According to the title report from First American Title Insurance Company, the City holds fee ownership for Lot 1, Old West Julian Street. At the proposed public hearing on August 29, 2017, concurrent with the action to vacate the street, Council will be asked to approve an agreement authorizing the sale of Lot 1, Old West Julian Street, upon the condition that closing occur after the vacation has been recorded. PCCC holds fee ownership to Lot 2; therefore, no further action by the City will be required for this lot upon recordation of the vacation.

By adopting the recommended resolution of intention to conditionally vacate, the Council will:

1. Declare its intention to conditionally vacate the Subject Portion with reservation of public service easements over the entire area being conditionally vacated;
2. Set a public hearing on August 29, 2017 at 1:30 p.m. to consider the conditional vacation;
3. Direct the City Clerk to file the plat map and publish notice of said public hearing; and
4. Direct the Director of Public Works to post the site with a Notice of Public Hearing.

EVALUATION AND FOLLOW-UP

If Council approves this resolution, a hearing will be set for August 29, 2017, at 1:30 pm to consider the adoption of a resolution conditionally vacating the Subject Portion.
PUBLIC OUTREACH

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 on the City’s website for the August 8, 2017, Council agenda.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Vacating the Subject Portion is in alignment with 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 on April 25, 2017 during fiscal year 2016-2017 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).
HONORABLE MAYOR AND CITY COUNCIL
July 17, 2017
Subject: Vacation of a Portion of Old West Julian Street Between North Autumn Street and Autumn Parkway
Page 6

CEQA

Exempt, File No. PP17-032, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/
BARRY NG
Director, Public Works Department

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

Attachment: Location Map
LOCATION MAP

SHOWING THE STREET VACATION ON
OLD WEST JULIAN STREET

AREA TO BE VACATED
(12,903 ± S.F.)