

RESOLUTION NO. 73343

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING A PORTION OF NINTH STREET, BETWEEN TAYLOR AND JACKSON STREETS, AND RESERVING A PUBLIC SERVICE EASEMENT**

**WHEREAS**, the vacation of the portion of Ninth Street described in Section 3 of this Resolution is being conducted pursuant to and in accordance with the provisions of Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California; and

**WHEREAS**, on June 20, 2006, the City Council adopted Resolution No. 73238 ("Resolution of Intention") declaring its intention to vacate the portion of Ninth Street described in Section 3 of this Resolution and to reserve a public service easement over the area vacated; and

**WHEREAS**, the Resolution of Intention gave notice that on Tuesday, the 8th day of August, 2006 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 said portion of Ninth Street; 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**, notices of the proposed street vacation, stating the purpose of the Resolution of Intention and the time and place set for the public hearing, were posted in the manner prescribed by law; and

**WHEREAS**, prior to the public hearing the plat map approved by the Director of Public Works on May 31, 2006, entitled "Plat To Accompany Description For Street Vacation Of A Portion Of Ninth Street" and showing the portion of Ninth Street proposed for vacation and the public service easement proposed for reservation ("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 August 8, 2006, 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 portion of Ninth Street, and received and considered all evidence submitted; and

**WHEREAS**, at the public hearing on the vacation of the portion of Ninth Street described in Section 3 of this Resolution, the City Council had before it a report from the Director of Public Works to the City Council, dated May 30, 2006, 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 at the public hearing, makes the following findings of relevant fact:

- A. This vacation is in conjunction with the construction of 44 single-family detached residences by Standard Pacific Corporation, and the portion of Ninth Street described in Section 3 of this Resolution is no longer required for vehicular travel; and
- B. The Planning Commission considered the proposed street vacation and found the proposed street vacation to be consistent with the City's General Plan and recommended approval of the proposed vacation, as reported in the report from the Planning Commission to the City Council dated June 6, 2006, attached hereto as "EXHIBIT C" and incorporated herein; and
- C. There are a number of public facilities on the portion of Ninth Street described in Section 3 of this Resolution; and
- D. All affected public utilities have been contacted and have no objections to the proposed vacation so long as a 6-foot public service easement is reserved; and

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

- A. The portion of Ninth Street described in Section 3 of this Resolution and depicted in the Plat Map are not necessary for present or prospective public street purposes; and
- B. Pursuant to the provisions of Section 892 of the Streets and Highways Code of the State of California, the portion of Ninth Street proposed for vacation is not useful as a non-motorized transportation facility; and
- C. The public convenience and necessity requires the reservation of a 6-foot public service easement over a portion of the street proposed for vacation; and
- E. The proposed vacation is consistent with the City's General Plan.

SECTION 3. Based on the above stated facts, conclusions and findings, the City Council hereby vacates the following portion of Ninth Street subject to the reservation of a 6-foot public service easement over and beneath a portion of the subject area, as

hereinafter described, for the purposes of constructing, maintaining, operating, replacing, removing or renewing the existing, or any future, public facilities located thereon:

Being a portion of right of way of Ninth Street, situated in the City of San Jose, County of Santa Clara, State of California, and more particularly described as follows:

Beginning at the most southerly corner of Parcel 3, as said parcel is shown on that certain Parcel Map recorded June 29, 1983 in Book 514 of Maps at Page 19, Santa Clara County Records, said corner being at the intersection of the northeasterly line of Ninth Street (being 80 feet in width) and the northwesterly line of Jackson Street (being 80 feet in width); thence along the southwesterly prolongation of said northwesterly line of Jackson Street South  $59^{\circ}21'23''$  West 2.50 feet to the beginning of a tangent curve; thence along a curve to the right through a central angle of  $89^{\circ}58'37''$  having a radius of 10.00 feet, an arc distance of 15.70 feet; thence tangent to the preceding curve and running along a line that is parallel with said northeasterly line of Ninth Street and 12.50 feet southwesterly, measured at right angles, North  $30^{\circ}40'00''$  West 807.78 feet to the beginning of a tangent curve; thence along a curve to the right through a central angle of  $90^{\circ}01'02''$  having a radius of 10.00 feet, an arc distance of 15.71 feet to a point on the southwesterly prolongation of the southeasterly line of East Taylor Street; thence tangent to the preceding curve and running along said prolongation North  $59^{\circ}21'02''$  East 2.50 feet to the intersection of said northeasterly line of Ninth Street; thence along said northeasterly line of Ninth Street South  $30^{\circ}40'00''$  East 827.78 feet to the point of beginning.

Public service easement reservation:

The southwesterly 6.00 feet of the above described parcel.

Excepting therefrom a 6-foot public service easement shall be reserved over the surface and beneath said parcel.

SECTION 4. The City Clerk is directed to record a certified copy of this Resolution in the Santa Clara County Recorder's Office.

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

ADOPTED this 8<sup>th</sup> day of August, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, NGUYEN,  
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: LeZOTTE

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk