

RESOLUTION NO. 73381

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONDITIONALLY VACATING A PORTION OF MCKINLEY AVENUE BETWEEN ST. ELIZABETH DRIVE AND MERIDIAN AVENUE AND RESERVING A PUBLIC SERVICE EASEMENT, AN EMERGENCY ACCESS EASEMENT AND A SANITARY SEWER EASEMENT.

WHEREAS, the vacation of a portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue 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 August 8, 2006, the City Council adopted Resolution No. 73335 (“Resolution of Intention”) declaring its intention to conditionally vacate the portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue described in Section 3 of this Resolution and to reserve a public service easement, an emergency vehicle access easement, and a sanitary sewer easement over a portion of the area vacated; and

WHEREAS, the Resolution of Intention gave notice that on Tuesday, the 29th 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 McKinley Avenue between St. Elizabeth Drive and Meridian Avenue; 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 July 20, 2006, entitled “Plat Showing That Portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue To Be Vacated” and showing the portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue proposed for vacation (“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 29, 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 McKinley Avenue between St. Elizabeth Drive and Meridian Avenue, and received and considered all evidence submitted; and

WHEREAS, at the public hearing on the vacation of the portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue 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 July 19, 2006, identified as "EXHIBIT A" ("Report") 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. The portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue, as described in Section 3 of this Resolution, is not needed for public purposes; and
- B. The Planning Commission considered the proposed street vacation as a City-initiated 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 July 28, 2006, attached hereto as "EXHIBIT C" and incorporated herein; and
- C. There are a number of public facilities on the portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue described in Section 3 of this Resolution that require abandonment, removal or relocation. The street vacation is therefore conditioned upon the abandonment, removal and relocation of the public facilities described in Section 3 herein

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

- A. The portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue described in Section 3 of this Resolution and depicted in the Plat Map is 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 McKinley Avenue between St. Elizabeth Drive and Meridian Avenue proposed for vacation is not useful as a non-motorized transportation facility; and

- C. The public convenience and necessity requires the reservation of a public service easement, an emergency vehicle access easement, and a sanitary sewer easement over a portion of the area of the street proposed for vacation; and
- D. 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 conditionally vacates, subject to the abandonment, removal and relocation of the public facilities described in Section 3 herein, the following portion of McKinley Avenue between St. Elizabeth Drive and Meridian Avenue subject to the reservation of a public service easement, an emergency vehicle access easement, and a sanitary sewer easement over and beneath 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:

AREA TO BE VACATED

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of that parcel of land described in the deed recorded October 21, 1964, in Book 6710 of Official Records, page 98, Santa Clara County Records, and a portion of Parcel No. 1 as described in the deed recorded October 21, 1964, in Book 6710 of Official Records, page 95, Santa Clara County Records, described as follows:

BEGINNING at the northeasterly corner of Parcel 1 as shown on that certain Parcel Map filed for record on April 7, 2004, in Book 768 of Maps, pages 53 & 54, Santa Clara County Records;

Thence along the easterly line of said Parcel 1, South 00°41'12" East, 40.00 feet, to the southerly line of that parcel of land described in said deed recorded in Book 6710 of Official Records, page 98;

Thence along said southerly line, the following four courses:

1. Thence South 89°29'50" West, 11.66 feet;
2. Thence along a tangent curve to the left, having a radius of 270.00 feet, through a central angle of 24°17'58" for an arc length of 114.51 feet;
3. Thence along a reverse curve to the right, having a radius of 330.00 feet, through a central angle of 24°29'49" for an arc length of 141.09 feet;
4. Thence along a reverse curve to the left, having a radius of 20.00 feet, through a central angle of 90°22'52" for an arc length of 31.55 feet, to a line that is parallel with and 30 feet easterly of the centerline of St. Elizabeth Drive (60 feet wide);

Thence along said parallel line, North 00°41'11" West, 80.14 feet, to the northerly line of Parcel No. 1 as described in said deed recorded in Book 6710 of Official Records, page 95;

Thence along said northerly line, North 89°42'38" East, 20.47 feet;

Thence along the northerly line of said Parcel No. 1 and that parcel of land described in said deed recorded in Book 6710 of Official Records, page 98, the following two courses:

1. Thence along a tangent curve to the left, having a radius of 270.00 feet, through a central angle of 24°30'36" for an arc length of 115.50 feet;
2. Thence along a reverse curve to the right, having a radius of 330.00 feet, through a central angle of 04°15'01" for an arc length of 24.48 feet, to the northerly line of Parcel 1 as shown on said Map;

Thence along said northerly line, North 89°29'50" East, 124.67 feet, to the POINT OF BEGINNING.

Containing 0.358 acres, more or less.

AREA OF PUBLIC SERVICE EASEMENT (PSE), EMERGENCY VEHICLE ACCESS EASEMENT (EVA), AND SANITARY SEWER EASEMENT (SS) TO BE RESERVED

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel C as described in the Lot Line Adjustment Permit recorded April 26, 2006, in Document No. 18904247 of Official Records, Santa Clara County Records; a portion of the parcel of land described in the deed to the City of San Jose, recorded June 30, 1977, in Book C963 of Official Records, page 406, Santa Clara County Records; and a portion of the parcel of land described in the deed to the City of San Jose, recorded July 17, 2002, in Document No. 16367948 of Official Records, Santa Clara County Records; described as follows:

BEGINNING at the most southerly corner of Parcel A as described in said Lot Line Adjustment Permit;

Thence along the general southerly line of said Parcel A, the following four courses:

1. Thence northeasterly along a curve to the left, having a radius of 294.00 feet, whose center bears North 21°51'11" West, through a central angle of 2°21'47" for an arc length of 12.13 feet;
2. Thence along a reverse curve to the right, having a radius of 296.00 feet, through a central angle of 10°20'43" for an arc length of 53.45 feet;
3. Thence North 0°30'51" West, 9.30 feet;
4. Thence North 89°29'50" East, 74.58 feet, to the easterly line of said Parcel C;

Thence along said easterly line, South 0°41'12" East, 40.00 feet, to the southerly line of the parcel of land described in the Dedication for Street Purposes recorded October 21, 1964, in Book 6710 of Official Records, page 98, Santa Clara County Records;

Thence along said southerly line, the following three courses:

1. Thence South 89°29'50" West, 11.66 feet;
2. Thence southwesterly along a tangent curve to the left, having a radius of 270.00 feet, through a central angle of 24°17'58" for an arc length of 114.51 feet;
3. Thence along a reverse curve to the right, having a radius of 330.00 feet, through a

central angle of 24°29'49" for an arc length of 141.09 feet;

Thence South 89°41'41" West, 20.13 feet, to the easterly line of St. Elizabeth Drive (60 feet wide);

Thence along said easterly line North 0°41'11" West, 42.30 feet;

Thence North 90°00'00" East, 33.85 feet;

Thence along a tangent curve to the left, having a radius of 294.00 feet, through a central angle of 21°51'11" for an arc length of 112.13 feet, to the POINT OF BEGINNING.

Containing 0.260 acres, more or less.

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. The portion of the street to be vacated will no longer constitute a public street upon satisfaction of all of the conditions in Section 3 herein relating to the abandonment, removal and relocation of public facilities.

ADOPTED this 29th day of August, 2006, by the following vote:

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

NOES: NONE

ABSENT: CHIRCO

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

