

RESOLUTION NO. 75156

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
SUMMARILY VACATING A PORTION OF ROCK AVENUE ALONG THE
NORTH SIDE, IMMEDIATELY WEST OF OAKLAND ROAD, IN FRONT OF
TRACT 9795**

WHEREAS, subdivision (a) of Section 8334 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate an excess right-of-way of a street not required for street purposes; and

WHEREAS, the City Council intends to summarily vacate a portion of Rock Avenue (hereinafter the "Right-of-Way") constituting all that real property situated in the City of San Jose, County of Santa Clara, State of California, more particularly described as:

REAL PROPERTY IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF ROCK AVENUE (60 FEET WIDE), AND BEING A PORTION OF THAT PACEL OF LAND DESCRIBED IN THE CORPORATON GRANT DEED RECORDED IN BOOK B216 OF OFFICAL RECORDS, PAGE 82, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MONUMENT AS SHOWN TO BE SET AT THE INTERSECTION OF THE MONUMENT LINES OF OAKLAND ROAD AND ROCK AVENUE ON THAT MAP OF TRACT 9618 FILED FOR RECORD DECEMBER 3, 2004 IN BOOK 778 OF MAPS, PAGES 13 THROUGH 19, SANTA CLARA COUNTY RECORDS;

THENCE ALONG SAID MONUMENT LINE OF OAKLAND ROAD, NORTH 9°58'58" WEST, 21.50 FEET, TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID ROCK AVENUE;

THENCE ALONG SAID PROLONGATION AND NORTHWESTERLY LINE, SOUTH 58°28'35" WEST, 57.13 FEET, TO THE TRUE POINT OF BEGINNING;

THENCE LEAVING SAID NORTHWESTERLY LINE, SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 32.00 FEET, WHOSE CENTER BEARS SOUTH 85°22'13" WEST, THROUGH A CENTRAL ANGLE OF 81°45'36" FOR AN ARC LENGTH OF 45.67 FEET;

THENCE WESTERLY ALONG A REVERSE CURVE TO THE LEFT, HAVING A RADIUS OF 187.00 FEET. THROUGH A CENTRAL ANGLE OF

18°40'14" FOR AN ARC LENGTH OF 60.94 FEET, TO A LINE PARALLEL WITH A DISTANT 6.00 FEET, MEASURED AT RIGHT ANGLES, SOUTHEASTERLY FROM THE NORTHWESTERLY LINE OF SAID ROCK AVENUE;

THENCE ALONG SAID PARALLEL LINE, SOUTH 58°28'35" WEST, 369.85 FEET TO THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 1 AS SHOWN ON THAT MAP OF TRACT 9795 FILED FOR RECORD OCTOBER 30, 2006 IN BOOK 808 OF MAPS, PAGES 25 AND 26 AND AMENDED BY CERTIFICATE OF CORRECTION RECORDED FEBRUARY 9, 2007 AS DOCUMENT NO. 19299690 OF OFFICAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG SAID PROLONGATION, NORTH 32°58'25" WEST, 6.00 FEET, TO THE NORTHWESTERLY LINE OF SAID ROCK AVENUE;

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 58°28'35" EAST, 468.65, TO THE TRUE POINT OF BEGINNING.

CONTAINING 3,303 SQUARE FEET, MORE OR LESS.

WHEREAS, on October 13, 2009, the Director of the Department of Public Works approved that certain map entitled "Plat Map Showing That Portion of Rock Avenue To Be Vacated" showing the portion of the Right-of-Way that the City Council intends to summarily vacate (hereinafter "Map"); and

WHEREAS, attached to this Resolution as Exhibit "A" is a copy of the report, dated October 13, 2009, that the Director of the Department of Public Works submitted to the City Council setting forth the reasons justifying the summary vacation of the Right-of-Way (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:

1. The Right-of-Way is a excess right-of-way of a street not required for street or highway purposes; and
2. This vacation is consistent with the City's roadway standards in that the remaining width will be within the design limits of a cul-de-sac street; and

3. No public facilities are located within the Right-of-Way that would be affected by a summary vacation; and
4. The Right-of-Way is not needed for present or prospective public facilities; and
5. The public convenience and necessity does not require reservation of any portion of the Right-of-Way.

SECTION 2. Based upon the findings made in Section 1 of this Resolution and the provisions of Section 8334 of the Streets and Highways Code, the City Council does hereby order that the Right-of-Way shall be and hereby is summarily vacated.

SECTION 3. The City Clerk is hereby direct to record at Santa Clara County Records this Resolution, including Exhibit "A" hereto, and the Map.

SECTION 4. The Right-of-Way will no longer constitute a public road from and after the date of recordation of the documents identified in Section 3 of this Resolution.

ADOPTED this 3rd day of November, 2009, by the following vote:

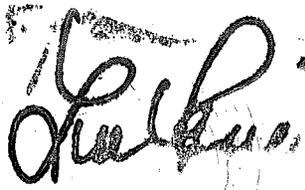
AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor

**EXHIBIT A***Memorandum***TO:** HONORABLE MAYOR
AND CITY COUNCIL**FROM:** Katy Allen**SUBJECT:** SUMMARY VACATION OF A
PORTION OF ROCK AVENUE**DATE:** 10-13-09

Approved

Date

COUNCIL DISTRICT: 5**RECOMMENDATION**

Adoption of a resolution summarily vacating a portion of Rock Avenue along the north side, immediately west of Oakland Road, in front of Tract 9795.

OUTCOME

Council adopts a resolution summarily vacating a portion of Rock Avenue along the north side, immediately west of Oakland Road, in front of Tract 9795 consistent with the condition of Planned Development Permit No. PD05-044.

BACKGROUND

HMH Engineers, the civil engineer of record, submitted an application on behalf to the property owner, Browning-Ferris Industries of California, to vacate a portion of Rock Avenue along the north side, immediately west of Oakland Road, in front of Tract 9795 (map attached). This portion of public right-of-way was created through a dedication of an easement for roadway purposes recorded on December 19, 1974 in Book B216 at Page 82 of Official Records, Office of the Recorder, County of Santa Clara. The vacation was a condition of Planned Development Permit No. PD05-044 for Tract 9795.

ANALYSIS

Staff has determined this portion of Rock Avenue is no longer needed for roadway purposes. Section 8334(a) of the California Streets and Highways Code allows the legislative body of a local agency to summarily vacate right-of-way when the local agency has determined that the proposed vacation abandons excess street right-of-way. Rock Avenue was surrounded by industrial land uses prior to 2004. Beginning in 2004, Council approved a series of General Plan Amendments converting industrial land uses to residential land uses. During the Planning stage, staff determined that a different roadway section is more appropriate given the adjacent residential land uses. This resulted in an excess right-of-way width of approximately 6 feet. All

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utility companies having rights to this portion of Rock Avenue have provided written confirmation that they agree to this proposed vacation.

According to the title report issued by First American Title Company, Browning-Ferris Industries of California holds fee ownership to the subject portion of right-of-way. Upon recordation of the vacation, this portion of Rock Avenue will no longer require City maintenance.

EVALUATION AND FOLLOW-UP

This project conforms to the Public Works performance measurement of maintaining a 100% cost-recovery program by charging service fees to pay for the staff time involved in this easement vacation process.

If Council adopts this resolution summarily vacating a portion of Rock Avenue along the north side, immediately west of Oakland Road, in front of Tract 9795, then no further action by the City will be required.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria above. All concerned utility companies have been contacted in writing and have no objection to this vacation. This memorandum will be posted to the City's website for the November 3, 2009 Council agenda.

COORDINATION

The vacation has been coordinated with the Department of Planning, Building, and Code Enforcement and the City Manager's Budget Office. In addition, the vacation and required

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resolution have been reviewed by the City Attorney's Office. All appropriate public utility companies have consented to the proposed vacation.

FISCAL/POLICY ALIGNMENT

Vacating a portion of Rock Avenue is in alignment with the Mayor's June 2009 Budget Message in that this action will reduce a potential City liability.

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees to process this public right-of-way vacation.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Mitigated Negative Declaration, PDC05-022.

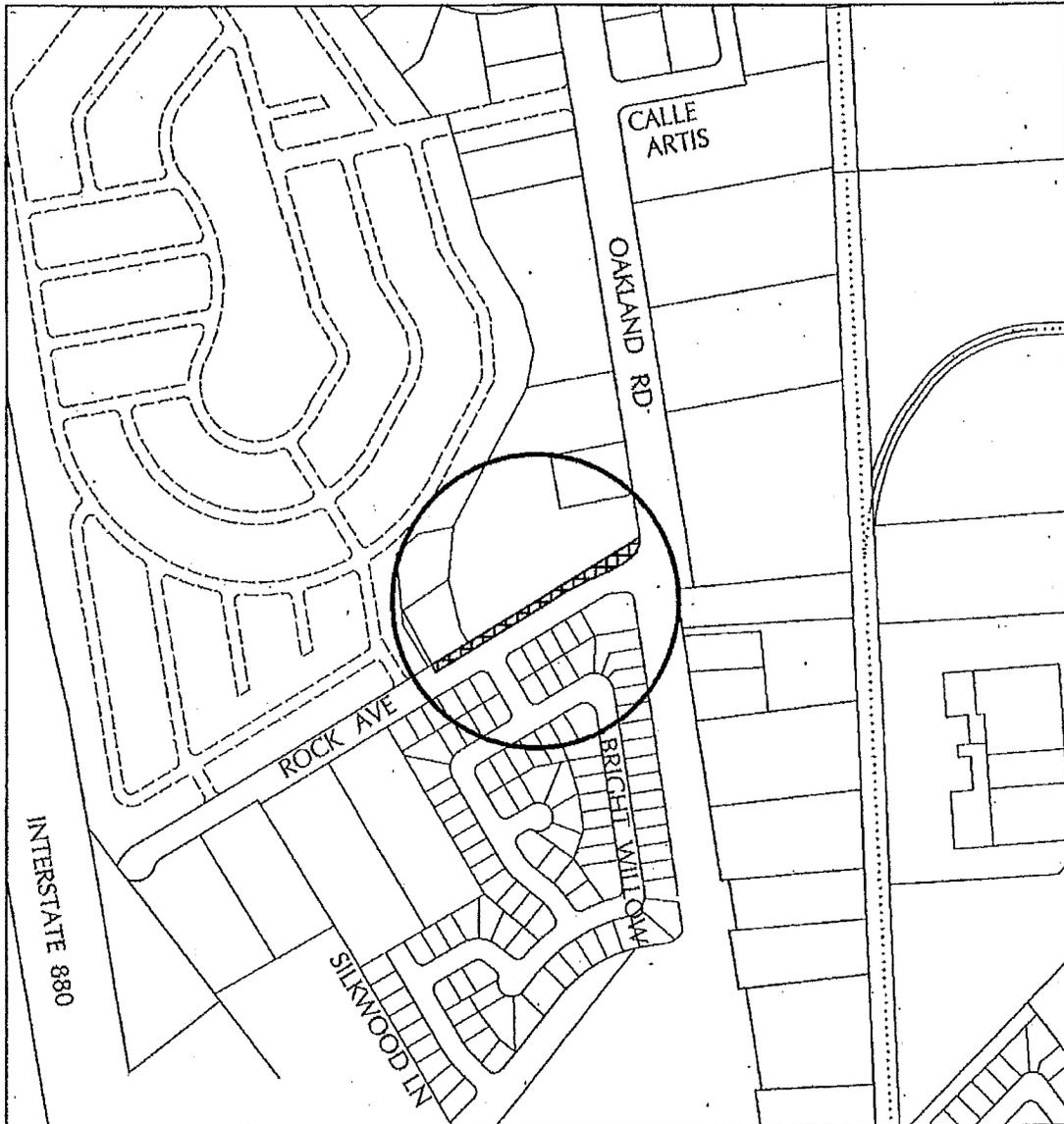
/s/

KATY ALLEN
Director, Public Works Department

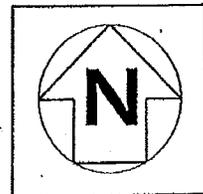
For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300

LOCATION MAP

SHOWING THE PORTION OF
ROCK AVENUE TO BE VACATED



AREA TO BE VACATED



PLAT MAP

SHOWING THAT PORTION OF
ROCK AVENUE TO BE VACATED



AREA TO BE VACATED

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS 3rd DAY OF
November 2009, AND APPROVED BY SAID CITY COUNCIL THIS 3rd DAY OF
November 2009 BY RESOLUTION NUMBER 75156

Susan M Javis, Deputy
CITY CLERK, CITY OF SAN JOSE

Katy Allen
KATY ALLEN
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS 13th DAY OF October 2009

