

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
JOSE CONDITIONALLY VACATING A PORTION OF  
UNIVERSITY AVENUE BETWEEN COLEMAN AVENUE  
AND WALNUT STREET WITHIN GUADALUPE GARDENS**

**WHEREAS**, on February 14, 1995, the Council of the City of José adopted Resolution No. 65732 authorizing the closure to vehicular traffic of 12 street segments in the Guadalupe Gardens area; and

**WHEREAS**, on September 15, 1998, the City Council adopted Resolution No. 68432 authorizing the closure to vehicular traffic of five additional street segments in the Guadalupe Gardens area and reuse for open space; and

**WHEREAS**, in 2002, the City Council adopted the Guadalupe Gardens Master Plan (“Master Plan”) which proposes the closure of certain public streets within the Guadalupe Gardens area and re-use of this area; and

**WHEREAS**, on October 19, 2021, the City Council adopted Resolution No. 80264, supported by the Federal Aviation Administration (“FAA”) Corrective Action Plan; and

**WHEREAS**, on April 11, 2023, the City Council adopted Resolution No. RES2023-97, extending the temporary closure of the public streets within the Guadalupe Gardens for another eighteen (18) months to provide time for the Department of Public Works and Airport Departments to coordinate and address utility conflicts with impacted utility companies; and

**WHEREAS**, Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public street if the

City Council determines that it has been superseded by relocation, and there are no in-place public utility facilities that are in use and would be affected by the vacation; and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, after the satisfaction of the condition set forth in Section 3 of this Resolution, summarily vacate the portion of University Avenue between Walnut Street and Coleman Avenue ("Subject Portion") constituting:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF UNIVERSITY AVENUE (FORMERLY UNIVERSITY PLACE AVENUE) AS SHOWN ON THE MAP OF UNIVERSITY GROUNDS, FILED AUGUST 25, 1866 IN BOOK A OF MAPS AT PAGE 80, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE INTERSECTION OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID UNIVERSITY AVENUE, ALSO BEING THE NORTHERLY LINE OF PARCEL TWO AS DESCRIBED IN CITY OF SAN JOSE ORDINANCE NO. 2739, ABANDONING A PORTION OF UNIVERSITY AVENUE, FILED NOVEMBER 25, 1940, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF COLEMAN AVENUE (FORMERLY LOCUST STREET) AS SHOWN ON SAID MAP OF UNIVERSITY GROUNDS;

THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE NORTH 41°26'00" WEST, 70.00 FEET TO THE NORTHWESTERLY RIGHT OF WAY LINE OF SAID UNIVERSITY AVENUE, ALSO BEING THE SOUTHERLY LINE OF PARCEL ONE AS DESCRIBED IN SAID SAN JOSE ORDINANCE NO. 2739;

THENCE ALONG SAID NORTHWESTERLY RIGHT OF WAY AND SAID SOUTHERLY LINE OF PARCEL ONE, NORTH 48°34'00" EAST, 400.00', TO THE MOST EASTERLY CORNER OF LOT 2, BLOCK 48 AS SHOWN ON SAID MAP OF UNIVERSITY GROUNDS;

THENCE CONTINUING SOUTH 41°26'00" EAST, 70.00' TO SAID NORTHERLY LINE OF PARCEL TWO;

THENCE SOUTH 48°34'00" WEST, 400.00' TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 28,000 SQ. FT., MORE OR LESS.

THE BEARINGS SHOWN HEREON ARE BASED ON THE MAP OF TRACT NO. 173, FILED IN BOOK 5 OF MAPS AT PAGE 40, SANTA CLARA COUNTY RECORDER'S OFFICE.

**WHEREAS**, on September 19, 2024, the Director of Public Works approved a map entitled "PLAT MAP TO ACCOMPANY LEGAL DESCRIPTION FOR THE CONDITIONAL VACATION OF A PORTION OF UNIVERSITY AVENUE BETWEEN WALNUT STREET AND COLEMAN AVENUE" ("Map"), attached hereto as Exhibit "A" and incorporated herein, which shows the Subject Portion; and

**WHEREAS**, attached to this Resolution as Exhibit "B" and incorporated herein is a copy of the memorandum report, dated September 9, 2024, that was submitted to the City Council setting forth the facts justifying the conditional summary vacation of the Subject Portion (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:

- A. The Subject Portion has been superseded by relocation and the vacation of the Subject Portion would not cut off all access to a person's property; and
- B. Government Code Section 65402 does not apply to this vacation; and
- C. The proposed vacation is consistent with the City's Master Plan and FAA Corrective Action Plan; and
- D. The Subject Portion is unnecessary for nonmotorized transportation as bordering rights-of-way are available and more suitable for such transportation; and

- E. The Subject Portion has been closed and/or impassable for vehicular travel for at least five years, and will have no impact on traffic; and
- F. There are public facilities located within the Subject Portion that will be relocated and/or abandoned at no cost to the City; and
- G. All affected public utilities have been contacted and have no objections to the proposed vacation and a public service easement is neither requested nor required.
- H. The public convenience and necessity does not require the reservation of a public service easement.

**SECTION 2.** Based on the findings made in Section 1 of this Resolution and the provisions of Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code of the State of California, the City Council does hereby summarily vacate, subject to the condition stated in Section 3 below, the Subject Portion.

**SECTION 3.** The vacation of the Subject Portion shall be conditioned on, and shall not occur until, the abandonment and/or relocation of existing utilities is completed to a condition that meets the satisfaction of the City's Public Works Department.

**SECTION 4.** After receiving written confirmation from the Director of Public Works that the condition in Section 3 has been satisfied, 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 6.** From and after the date this Resolution is recorded, the Subject Portion will no longer constitute public streets.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, MMC  
City Clerk

EXHIBIT "A"

# PLAT MAP

TO ACCOMPANY THE LEGAL DESCRIPTION FOR THE CONDITIONAL VACATION  
OF A PORTION OF UNIVERSITY AVENUE BETWEEN  
WALNUT STREET AND COLEMAN AVENUE

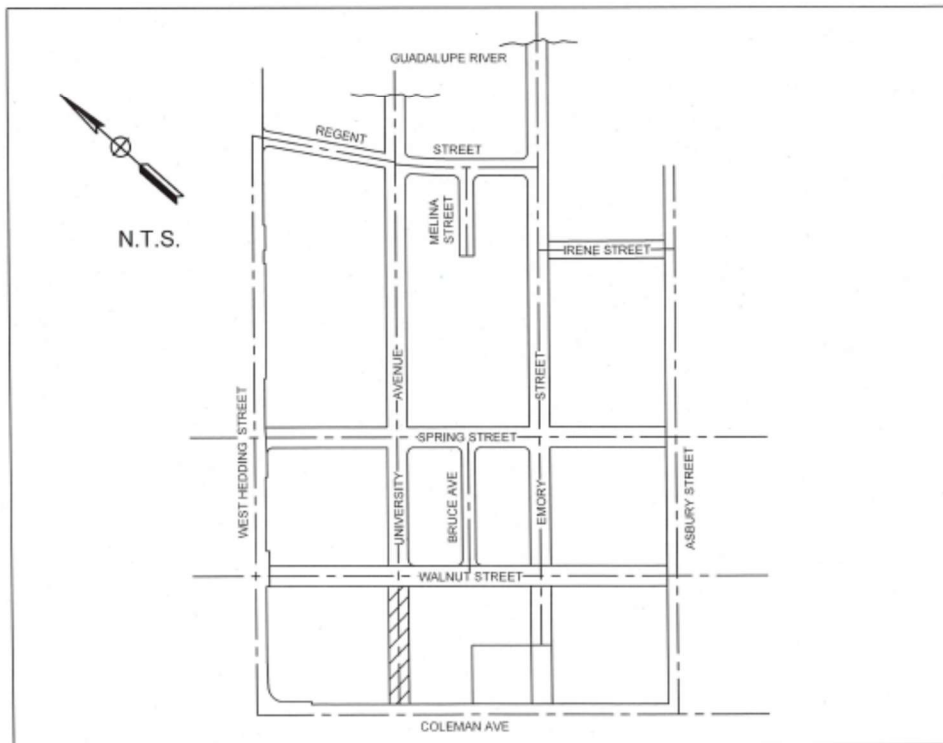


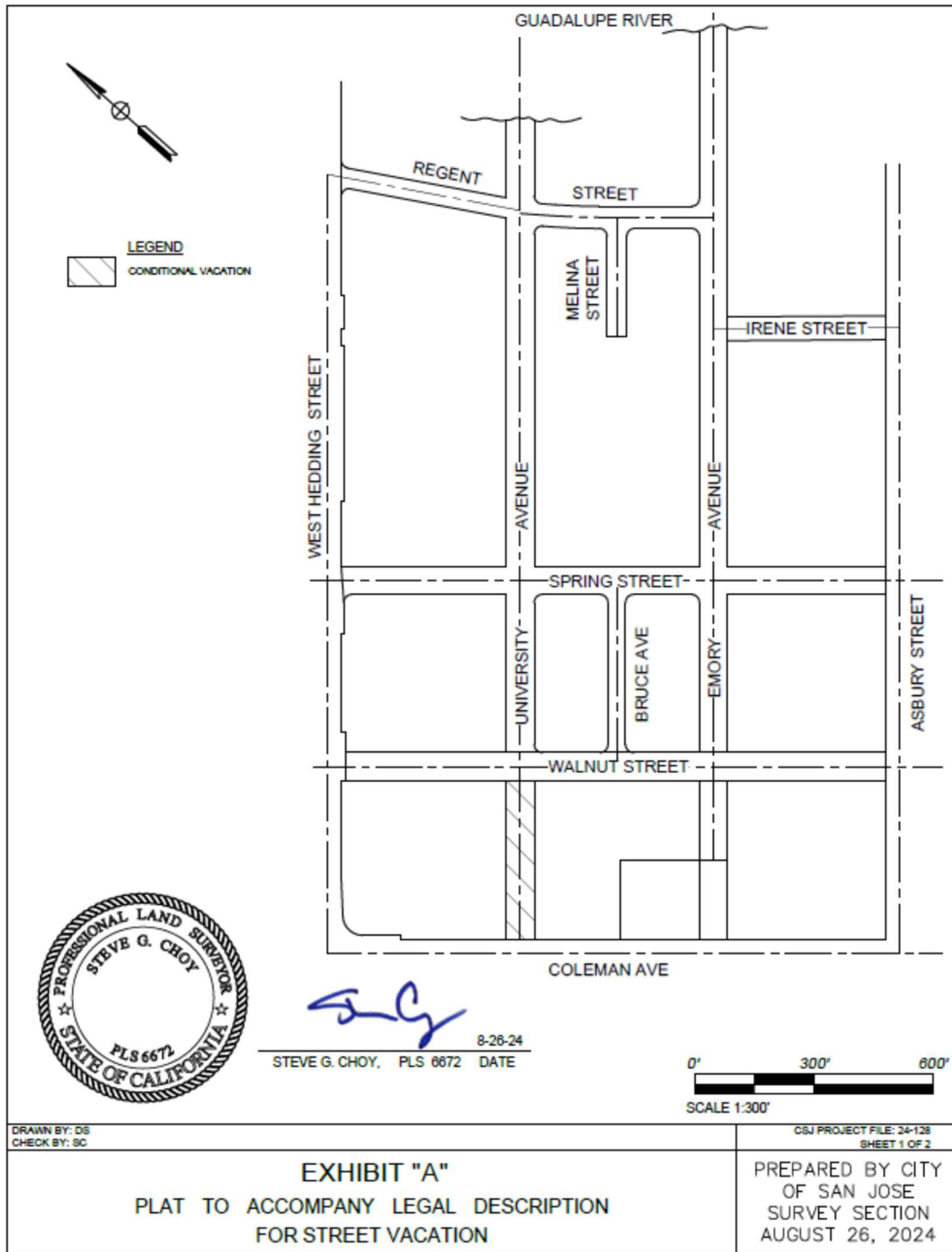
AREA TO BE VACATED

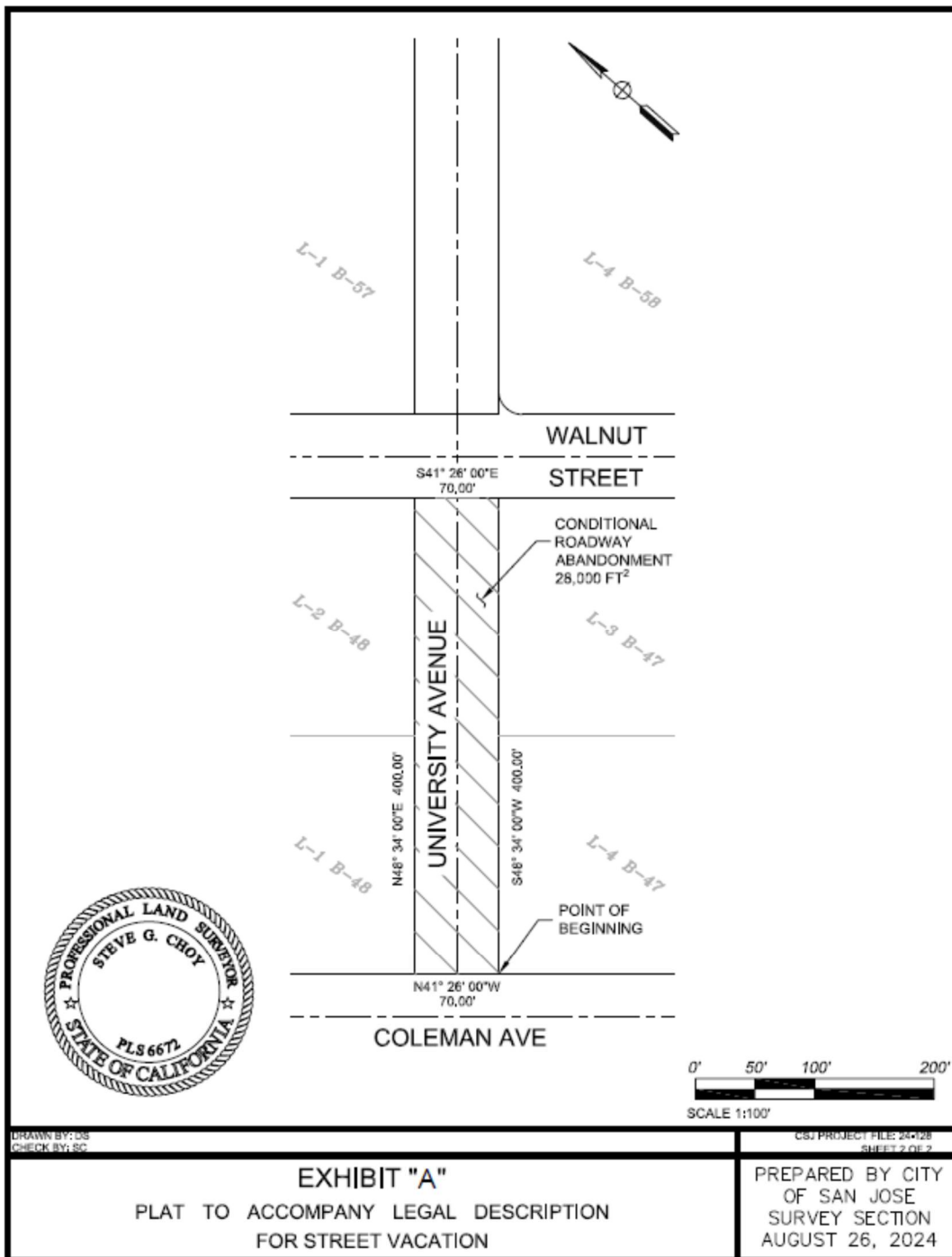
FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, AND APPROVED BY SAID CITY COUNCIL THIS \_\_\_\_ DAY OF  
\_\_\_\_\_ BY RESOLUTION NUMBER \_\_\_\_\_

MATT LOESCH  
DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

APPROVED THIS 19 DAY OF September









**EXHIBIT "B"**  
**REPORT**

COUNCIL AGENDA: 10/1/24  
FILE: 24-197291  
ITEM: 5.1



*Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch  
Mukesh (Mookie) Patel

**SUBJECT:** See Below

**DATE:** September 9, 2024

Approved

*Mukesh M. Mookie*

Date:

9/17/24

**COUNCIL DISTRICT: 6**

**SUBJECT: Summary Vacation of Melina Street, Bruce Avenue, and Portions of Regent Street, University Avenue, Emory Street, Walnut Street, and Spring Street with Reservations of Public Service Easements Within the Areas Being Vacated and Conditional Vacation of a Portion of University Avenue All Within Guadalupe Gardens**

**RECOMMENDATION**

- a) Conduct a public hearing on the summary vacations of Melina Street, Bruce Avenue, and a portion of Regent Street, University Avenue, Emory Street, Walnut Street, and Spring Street with the reservation of Public Service Easements within the areas being vacated in Guadalupe Gardens, and a conditional vacation of a portion of University Avenue within Guadalupe Gardens.
- b) Adopt a resolution:
- 1) Approving the report of the Director of Public Works and Director of Aviation setting forth the facts justifying the summary vacation of Melina Street, Bruce Avenue, and a portion of Regent Street, University Avenue, Emory Street, Walnut Street, and Spring Street with the reservation of Public Service Easements within the areas being vacated in Guadalupe Gardens (Subject Portion 1);
  - 2) Summarily vacating Subject Portion 1, which is excess right-of-way not required for street purposes and reserving Public Service Easements within the areas being vacated; and
  - 3) Directing the City Clerk to record a certified copy of the resolution of vacation for Subject Portion 1 with the Office of the Clerk-Recorder, County of Santa Clara.

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c) Adopt a resolution:

- 1) Approving the report of the Director of Public Works and Director of Aviation setting forth the facts justifying the conditional vacation of a portion of University Avenue between Coleman Avenue and Walnut Street within Guadalupe Gardens (Subject Portion 2);
- 2) Conditionally vacating Subject Portion 2 following the completion of the condition to abandon and/or relocate existing in-use public utility facilities; and
- 3) After satisfaction of the condition, directing the City Clerk to record a certified copy of the resolution of vacation for Subject Portion 2 with the Office of the Recorder, County of Santa Clara.

#### **SUMMARY AND OUTCOME**

Upon recordation of the resolutions of vacation, Subject Portion 1 and Subject Portion 2 (collectively "Subject Portions") within Guadalupe Gardens will be abandoned as public streets and the City will retain public service easements over certain areas being vacated (**Attachment** – Location Map of Streets within Guadalupe Gardens to be Vacated). The City will be able to develop the areas as outlined in the Guadalupe Gardens Master Plan and approved Federal Aviation Administration Corrective Action Plan.

#### **BACKGROUND**

The City holds fee ownership to all parcels and rights-of-way that will be vacated. On February 14, 1995, City Council adopted Resolution No. 65732 authorizing the closure to vehicular traffic of 12 street segments within the Guadalupe Gardens area. On September 15, 1998, City Council adopted Resolution No. 68432 authorizing the closure to vehicular traffic of five additional street segments for reuse as open space.

The Guadalupe Gardens Master Plan (Master Plan), adopted by the City Council in 2002 guides street closures and re-use of this area. The Master Plan includes the following proposals.

- Closure of part of Spring Street (from Hedding Street to Asbury Street) for implementation of the Master Plan. Spring Street is currently temporarily closed but this action would make the closure permanent.

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- Conversion of Spring Street to a recreational path between Hedding Street and Asbury Street.
- Conversion of the remaining streets to walking trails and/or open space.

On October 19, 2021, City Council adopted Resolution No. 80264 authorizing a temporary 18-month closure of Spring Street, between Hedding Street and Asbury Street; Asbury Street, between Walnut Street and Taylor Street; and Irene Street, between Taylor Street and Asbury Street from October 19, 2021, and ending on April 19, 2023. This action supported the Airport's Corrective Action Plan (approved by the Federal Aviation Administration on August 1, 2021) to prevent future incompatible land uses on federally regulated land through the activation of the Guadalupe Gardens.

On April 11, 2023, the City Council adopted Resolution No. RES2023-97 extending the temporary closure for another 18 months starting on April 20, 2023, and ending on October 20, 2024. This action provided time for staff to coordinate and address utility conflicts with impacted utility companies.

Since the City does not intend to use these streets any longer for right-of-way purposes, the City needs to vacate the streets through the formal vacation process. Additionally, open space uses proposed in the Guadalupe Gardens are not authorized on street right-of-way. The City will retain the discretion to re-open any or all closed streets, which may be considered as future development within Guadalupe Gardens consistent with the Master Plan and Federal Aviation Administration Corrective Action Plan.

### **ANALYSIS**

Pursuant to the Streets and Highways Code Section 8324(b), City Council may adopt a resolution to vacate a street if the legislative body finds, from all evidence submitted, that the street described in the notice of hearing or petition is unnecessary for present or prospective public use. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied.

In addition, pursuant to the Streets and Highway Code Section 8334(a) and 8334.5, a street or highway may be summarily vacated if the legislative body of a local agency determines that it is excess right-of-way, not required for street or highway purposes, and that no in-place public utility facilities that are in use would be affected by the vacation.



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Staff has reviewed the vacation application and determined that the Subject Portions are excess rights-of-ways and not required for street purposes. Except for Spring Street, the streets identified to be vacated as part of the memorandum have not been used for roadway purposes since the City Council authorized their closure to vehicular traffic in the late 1990s. The streets are unpaved and inaccessible for public use. The portion of Spring Street proposed for vacation is approximately one-quarter of a mile long, a two-lane neighborhood collector street. However, Spring Street is currently closed under California Vehicle Code 21101.4. There are no privately owned parcels, residences, or businesses adjacent to or within the proposed vacation areas.

The vacation of Spring Street, between Asbury and Hedding Streets, and the future removal of the pavement, curb, and gutter would advance the local street closure/pavement removal projects previously conditioned by the City Council as part of the "naturalization" of the Guadalupe Gardens area per the 2002 Master Plan.

The vacation of the subject portions will not create neighborhood circulation issues or increase traffic or parking impacts for neighborhoods west of Coleman Avenue or east of Highway 87. Other than Spring Street, all these right-of-ways are no longer paved streets, so their vacation would have no impact on traffic.

Additionally, all concerned utility companies have been contacted in writing and have no objections to the proposed vacation so long as a public service easement is reserved over Subject Portion 1. Several public utility facilities are within Subject Portion 1, which will remain to serve future development. No in-place public utility facilities would be affected because public service easements would be reserved within the areas being vacated. However, within Subject Portion 2, there are in-place public utilities. The affected utility companies have agreed to either abandon or relocate the utilities out of this vacation area. A public service easement was not requested and will not be reserved. Therefore, staff recommends that Subject Portion 2 be conditionally vacated following the completion of abandonment or relocation of the existing utilities.

This approach allows the Airport to pursue a future commercial development project on those project parcels consistent with the approved Federal Aviation Administration Corrective Action Plan.

#### **EVALUATION AND FOLLOW-UP**

If the City Council approves the recommended actions, no further action by the Council will be required. After the Director of Public Works confirms in writing that the conditions for abandoning and/or relocating existing in-use utilities have been satisfied, the City

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Clerk will record the vacation of University Avenue, between Coleman Avenue and Walnut Street, finalizing the process.

#### **COST SUMMARY/IMPLICATIONS**

Prior fees paid by the Airport were deposited to the Public Works Development Fee Program in the Public Works Development Fee Program Fund. There have been additional Public Works expenses and consultant fees incurred, the total is currently estimated in the amount of \$65,000 to account for staff time associated with processing the street vacation.

#### **BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the fees for right-of-way vacation, survey, and any staff time associated with processing the street vacation.

<b>Fund #</b>	<b>Appn. #</b>	<b>Appropriation Name</b>	<b>Total Appropriation*</b>	<b>2024-2025 Proposed Capital Budget Page*</b>	<b>Last Budget Action (Date, Ord. No.)</b>
527	423K	Guadalupe Gardens Fencing	\$277,000	504	6/18/2024, Ord. No. 31102

\* The 2024-2025 Adopted Budget was approved by City Council on June 11, 2024, and adopted on June 18, 2024.

#### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Departments of Planning, Building, and Code Enforcement, Parks, Recreational and Neighborhood Services, and Transportation.

#### **PUBLIC OUTREACH**

All concerned utility companies have been contacted in writing and have no objections to the proposed vacation provided that a public service easement is reserved over the

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Subject Portions except for University Avenue between Coleman Avenue and Walnut Street.

This memorandum will be posted on the City's Council Agenda website for the October 1, 2024 City Council meeting.

**COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Categorically Exempt, File No. ER22-158, CEQA Guidelines Section 15303(e) New Construction or Conversion of Small Structures.

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Matt Loesch  
Director of Public Works

/s/

Mukesh (Mookie) Patel  
Director of Aviation

For questions, please contact Sal Kumar, Deputy Director of Public Works, at [sal.kumar@sanjoseca.gov](mailto:sal.kumar@sanjoseca.gov)

**ATTACHMENT** – Location Map of Streets within Guadalupe Gardens to be Vacated.

