RESOLUTION NO. ______

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING A PORTION OF THE PUBLIC SERVICE EASEMENT (PSE) AND WIRE CLEARANCE EASEMENT (WCE) LYING WITHIN LOT 163 OF TRACT 3451

WHEREAS, subdivision (a) of Section 8333 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate a public service easement if the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation; and

WHEREAS, the City Council intends to summarily vacate a portion of the Public Service Easement and Wire Clearance Easement (hereinafter the "Easement") constituting all that real property situated in the City of San Jose, County of Santa Clara, State of California, more particularly described as:

The 5 foot wide Wire Clearance Easement and the 10 foot wide Public Service Easements to be abandoned are located within a portion of Lot 163 as said lot is shown upon that certain map entitled "Tract 3451 San Jose Highlands Unit No. 4" as said tract was recorded in Book 165 of Maps at pages 52 and 53, Santa Clara County Records, said easements are located in the City of San Jose, County of Santa Clara, State of California, and are described as follows:

That portion of the said 5 foot wide Wire Clearance Easement and that portion of said 10 foot wide Public Service Easement that cross a portion of said Lot 163 and lie within that property described in Parcel One of that Grant Deed recorded in Document No. 19876351, Santa Clara County Records.

WHEREAS, on January 27, 2009, the Director of the Department of Public Works approved that certain map entitled "PLAT MAP SHOWING A 10 FOOT WIDE PUBLIC SERVICE EASEMENT (PSE) AND 5 FOOT WIDE WIRE CLEARANCE EASEMENT (WCE) TO BE VACATED" showing the portion of the Easement 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 February 17, 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 Easement (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 Easement has not been used for the purpose for which it was originally acquired for five consecutive years immediately preceding the proposed vacation; and

2. No public facilities are located within the Easement that would be affected by a summary vacation; and

3. This portion of the Easement is not needed for present or prospective easement purposes; and

4. The public convenience and necessity does not require reservation of any portion of the Easement.

SECTION 2. Based upon the findings made in Section 1 of this Resolution and the provisions of Section 8333 of the Streets and Highways Code, the City Council does hereby order that the subject portion of the Easement shall be and hereby is summarily vacated.

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

SECTION 4. The subject portion of the Easement will no longer constitute a Public Service Easement and Wire Clearance Easement from and after the date of recordation of the documents identified in Section 3 of this Resolution.
ADOPTED this ____ day of ___________, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 02-17-09

COUNCIL DISTRICT: 4

SUBJECT: SUMMARY VACATION OF A 10-FOOT PUBLIC SERVICE EASEMENT AND 5-FOOT WIRE CLEARANCE EASEMENT

RECOMMENDATION

Adoption of a resolution summarily vacating a 10-foot Public Service Easement and a 5-foot Wire Clearance Easement lying in the northerly and southerly boundaries of Lot 163, Tract 3451 (Mylinda Drive).

OUTCOME

Council adopts a resolution summarily vacating a 10-foot Public Service Easement and a 5-foot Wire Clearance Easement lying in the northerly and southerly boundaries of Lot 163, Tract 3451 (Mylinda Drive).

BACKGROUND

Lakhwinder S. Bhangoo, property owner, submitted an application to vacate a 10-foot Public Service Easement (PSE) and a 5-foot Wire Clearance Easement (WCE) lying in the northerly and southerly boundaries of Lot 163, Tract 3451 (map attached). The PSE and WCE were created by Tract No. 3451, recorded in Book 165 of Maps at pages 52 through 53, Santa Clara County Records, on August 29, 1963. This application for vacation is needed to remove these encumbrances from the property and allow the owner to develop his property.

ANALYSIS

Staff has determined that these portions of the easements lying within the property are not needed for public purposes and can be vacated without adverse effects. All concerned utility companies have been contacted in writing and have no objection to this vacation. In addition, these portions of the easement do not contain any public facilities and have not been used for the purpose for which it was originally acquired, since its inception, which then allows for this summary vacation.
According to the title report issued by First American Title Company, dated October 14, 2008, Lakhwinder S. Bhangoo and Pal K. Bhangoo, husband and wife, hold fee ownership to the property. Upon vacation of the PSE and WCE, these encumbrances will be removed and no further action by staff would be required.

EVALUATION AND FOLLOW-UP

This project addresses Public Works performance measures to maintain 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 the subject PSE and WCE, no further action by staff would 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 March 10, 2009 Council agenda.

COORDINATION

The vacation has been coordinated with the appropriate public utility companies, Departments of Transportation, Police, Fire and the City Manager’s Budget Office. In addition, the vacation and required resolution have been reviewed by the City Attorney’s Office. All appropriate public utility companies have consented to the proposed vacation.

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
FISCAL/POLICY ALIGNMENT

Vacating this PSE and WCE is in alignment with the Mayor’s June 2008 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 easement vacation.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Not a project.

KATY ALLEN
Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300.
LOCATION MAP
SHOWING A 10 FOOT WIDE PUBLIC SERVICE EASEMENT (PSE) AND 5 FOOT WIDE WIRE CLEARANCE EASEMENT (WCE) TO BE VACATED

AREA TO BE VACATED
PLAT MAP
SHOWING A 10 FOOT WIDE PUBLIC SERVICE EASEMENT (PSE) AND 5 FOOT WIDE WIRE CLEARANCE EASEMENT (WCE) TO BE VACATED

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 ___________

CITY CLERK, CITY OF SAN JOSE

KATY ALENS
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS ____. DAY OF _____________

NOTE: THIS LINE IS PER LOT LINE
ADJUSTMENT NO. 2349, AND
GRANT DEED DOC. NO. 198714351.

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.