

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
SUMMARILY VACATING A PUBLIC SERVICE EASEMENT AND
WIRE CLEARANCE EASEMENT AT 1730 PEREGRINO WAY**

WHEREAS, subdivision (a) of Section 8333 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate an easement that 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 the Public Service Easement and Wire Clearance Easement (hereinafter the "Easements") constituting all that real property situated in the City of San Jose, County of Santa Clara, State of California, more particularly described as:

BEING A PORTION OF LOT 6 AS SHOWN AND DELINEATED ON THAT CERTAIN TRACT MAP ENTITLED "TRACT NO. 3522 PILGRIM SUBDIVISION," RECORDED ON AUGUST 12, 1963 IN BOOK 165 OF MAPS AT PAGES 2 AND 3, SANTA CLARA COUNTY RECORDS:

PUBLIC SERVICE EASEMENT

BEING THE AREA ENCOMPASSED BY THE PUBLIC SERVICE EASEMENT OVER, UNDER AND UPON SAID LOT 6, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT THE NORTHERN MOST CORNER OF SAID LOT 6 FROM WHICH A STREET MONUMENT IN THE CENTER OF PEREGRINO WAY BEARS SOUTH 59° 32' 10" EAST 75.93 FEET DISTANT, AS SAID MONUMENT AND STREET ARE SHOWN AND DELINEATED ON THE AFOREMENTIONED TRACT MAP;

THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHWESTERN BOUNDARY OF SAID LOT SOUTH 44° 15' WEST 220.44 FEET TO A FOUND ¾ " OPEN IRON PIPE AT THE SOUTHWESTERN CORNER THEREOF; THENCE ALONG THE SOUTHWESTERN BOUNDARY OF SAID LOT SOUTH 28° 05' WEST 97.29 FEET TO THE SOUTHERN MOST CORNER OF SAID LOT 6; THENCE ALONG THE SOUTHEASTERN BOUNDARY OF SAID LOT NORTH 35° 14' 40" EAST 40.43 FEET TO THE SOUTHWESTERN WIRE CLEARANCE EASEMENT LINE AS SHOWN AND DELINEATED ON SAID TRACT MAP; THENCE LEAVING SAID SOUTHEASTERN BOUNDARY AND ALONG SAID LAST MENTIONED WIRE CLEARANCE EASEMENT LINE NORTH 39° 24' 30" WEST 76.85 FEET, MORE OR LESS, TO A POINT THAT IS 10.00 FEET DISTANT SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM

THE NORTHWESTERN BOUNDARY OF LOT 6; THENCE PARALLEL WITH SAID NORTHWESTERN BOUNDARY NORTH 44° 15' EAST 204.01 FEET TO THE NORTHEASTERN BOUNDARY OF SAID LOT 6 THENCE ALONG SAID LAST MENTIONED BOUNDARY NORTH 59° 32' 10" WEST 10.30 FEET TO THE PLACE OF BEGINNING, AND

CONTAINING 4,643 SQUARE FEET OF LAND A LITTLE MORE OR LESS.

WIRE CLEARANCE EASEMENT

BEING THE AREA ENCOMPASSED BY THE WIRE CLEARANCE EASEMENT OVER, UNDER AND UPON SAID LOT 6, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT A STATION IN THE NORTHEAST BOUNDARY OF SAID LOT 6 AT THE POINT OF INTERSECTION WITH THE SOUTHEASTERN LINE OF THE PUBLIC SERVICE EASEMENT LINE AS SHOWN AND DELINEATED ON SAID TRACT MAP FROM WHICH THE NORTHERN MOST CORNER OF SAID LOT BEARS NORTH 59° 32' 10" WEST 10.30 FEET DISTANT;

THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHEASTERN PUBLIC SERVICE EASEMENT LINE SOUTH 44° 15' WEST 204.01 FEET TO AN ANGLE POINT THEREIN AS SHOWN ON SAID TRACT MAP AND AS DESCRIBED IN PARCEL ONE ABOVE; THENCE ALONG THE NORTHEASTERN PUBLIC SERVICE EASEMENT LINE SOUTH 39° 24' 30" EAST 76.85 FEET TO THE SOUTHEASTERN BOUNDARY OF SAID LOT 6; THENCE ALONG SAID LAST MENTIONED BOUNDARY NORTH 35° 14' 40" EAST 5.18 FEET TO A POINT THAT IS 5.00 FEET DISTANT NORTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM SAID NORTHEASTERN PUBLIC SERVICE EASEMENT LINE; THENCE PARALLEL WITH SAID NORTHEASTERN PUBLIC SERVICE EASEMENT LINE NORTH 39° 24' 30" EAST 71.00 FEET TO A POINT THAT IS 5.00 FEET DISTANT SOUTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM SAID SOUTHEASTERN PUBLIC SERVICE EASEMENT LINE; THENCE NORTH 44° 15' EAST 200.76 FEET TO THE NORTHEASTERN BOUNDARY OF SAID LOT 6, THENCE ALONG SAID LAST MENTIONED BOUNDARY NORTH 59° 32' 10" WEST 5.15 FEET TO THE PLACE OF BEGINNING, AND

CONTAINING 1,382 SQUARE FEET OF LAND A LITTLE MORE OR LESS.

WHEREAS, on December 18, 2009, the Director of the Department of Public Works approved that certain map entitled "Plat Map Showing A Public Service Easement and Wire Clearance Easement At 1730 Peregrino Way To Be Vacated" showing the portion of the Easements 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 January 11, 2010, that the Director of the Department of Public Works submitted to the City Council setting forth the reasons justifying the summary vacation of the Easements (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 Easements have not been used for the purposes for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation; and
- B. No public facilities are located within the Easements that would be affected by a summary vacation; and
- C. The Easement is not needed for prospective public facilities; and
- D. The public convenience and necessity does not require reservation of any portion of the Easements.

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 Easements shall be and hereby are 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 Easements will no longer constitute public easements from and after the date of recordation of the documents identified in Section 3 of this Resolution.

RD:VMT
12/18/09

ADOPTED this _____ day of _____, 2010, by the following vote:

AYES:

NOES:

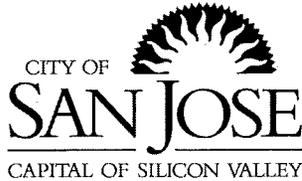
ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 01-11-10

Approved

Date

COUNCIL DISTRICT: 5

SUBJECT: SUMMARY VACATION OF A PUBLIC SERVICE EASEMENT AND A WIRE CLEARANCE EASEMENT AT 1730 PEREGRINO WAY.

RECOMMENDATION

Adoption of a resolution summarily vacating a Public Service Easement and Wire Clearance Easement at 1730 Peregrino Way.

OUTCOME

Council adopts a resolution summarily vacating a Public Service Easement and Wire Clearance Easement at 1730 Peregrino Way.

BACKGROUND

Michael W. Warner, the property owner, submitted an application to vacate a Public Service Easement (PSE) and Wire Clearance Easement (WCE) on a private property located at 1730 Peregrino Way (map attached). Both the PSE and WCE were created through the recordation of Tract No. 3522 recorded on August 12, 1963 in Book 165 of Maps at Pages 2 and 3, Santa Clara County Records. The property owner requests the vacation of these encumbrances to build an additional two-car garage.

ANALYSIS

Staff has determined that the subject easements are not needed for public purposes. Section 8333(a) of the California Streets and Highways Code allows the legislative body of a local agency to summarily vacate an easement that has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation. The property owner acquired the property in 1982 and confirmed the easements have not been utilized. All utility companies having rights to the subject easements have provided written confirmation that they agree to the proposed vacation.

According to the title report issued by Commonwealth Land Title Company, Michael W. Warner and Laurie E. Warner, husband and wife, as joint tenants, are the underlying fee owners of the area proposed for vacation. Upon recordation of the vacation, the subject easements will be removed from the property and no further action by the City will be required.

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 the subject easements, 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 the vacation. This memorandum will be posted to the City's website for the February 2, 2010 Council agenda.

COORDINATION

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

HONORABLE MAYOR AND CITY COUNCIL

01-11-10

Subject: Summary Vacation of a Public Service Easement and Wire Clearance Easement at 1730 Peregrino Way

Page 3

FISCAL/POLICY ALIGNMENT

Vacating the subject easements 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: Not a project.

/s/

KATY ALLEN
Director, Public Works Department

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

PD:RD:des
Attachment

PLAT MAP

SHOWING A PUBLIC SERVICE EASEMENT AND WIRE
CLEARANCE EASEMENT AT 1730 PEREGRINO WAY 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 ALLEN

DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS 18th DAY OF December 2009

