

**RESOLUTION NO. 75261**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING A PUBLIC SERVICE EASEMENT WITHIN A PRIVATE PROPERTY AT 3550 SNELL AVENUE**

**WHEREAS**, the vacation of a Public Service Easement 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 December 15, 2009, the City Council adopted Resolution No. 75228 ("Resolution of Intention") declaring its intention to vacate the Public Service Easement described in Section 3 of this Resolution; and

**WHEREAS**, the Resolution of Intention gave notice that on Tuesday, the 26th day of January, 2010 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 Public Service Easement; 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 Public Service Easement 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 December 4, 2009, entitled "Plat Map Showing A Public Service Easement Within A Private Property At 3550 Snell Avenue To Be Vacated" and showing the Public Service Easement 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 January 26, 2010, 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 Public Service Easement vacation, and received and considered all evidence submitted; and

**WHEREAS**, at the public hearing on the vacation of the Public Service Easement 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 January 4, 2009, identified as "EXHIBIT A" 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. No public facilities are located within the subject easement that would be affected by the proposed vacation; and
- B. All affected public utilities have been contacted and have no objections to the proposed vacation.

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

- A. The Public Service Easement described in Section 3 of this Resolution and depicted in the Plat Map is not necessary for present or prospective easement purposes; and
- B. Pursuant to the provisions of Section 892 of the Streets and Highways code of the State of California, the Public Service Easement proposed for vacation is not useful as a nonmotorized transportation facility.
- C. The public convenience and necessity does not require reservation of any portion of the easement.
- 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 vacates the Public Service Easement constituting all that real property situated in the City of San Jose, County of Santa Clara, State of California, more particularly described as:

THAT CERTAIN PORTION OF THE PUBLIC SERVICE EASEMENT (PSE) AS SAID PSE IS SHOWN ON THAT CERTAIN TRACT MAP ENTITLED "TRACT NO: 6937" FILED FOR RECORD MAY 22, 1981 IN BOOK 485 OF MAPS AT PAGES 4-5, SANTA CLARA COUNTY RECORDS THAT IS SITUATE WITHIN THE BOUNDARY LINES OF LOT C OF AS SAID LOT C IS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD MAY 18, 1984 IN BOOK 529 MAPS AT PAGES 1-2, SANTA CLARA COUNTY RECORDS.

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. From and after the date this Resolution is recorded, the easement vacated will no longer constitute a public service easement.

ADOPTED this 26<sup>th</sup> day of January, 2010, by the following vote:

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

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



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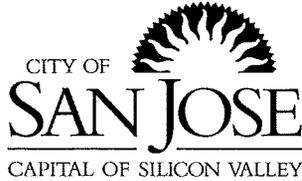
CHUCK REED  
Mayor

ATTEST:



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LEE PRICE, MMC  
City Clerk



*Memorandum*

75261

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** PUBLIC SERVICE EASEMENT  
VACATION AT 3550 SNELL  
AVENUE

**DATE:** 01-04-10

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Approved

Date

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**COUNCIL DISTRICT:** 7

**RECOMMENDATION**

Conduct a public hearing and adopt a resolution to vacate a Public Service Easement within a private property at 3550 Snell Avenue.

**OUTCOME**

Council adopts a resolution to vacate a Public Service Easement within a private property at 3550 Snell Avenue.

**BACKGROUND**

Chappell Surveying Services submitted an application on behalf of the property owner, Santa Clara County Board of Education, to vacate a Public Service Easement (PSE) within a private property at 3550 Snell Avenue (map attached). The PSE was created through the recordation of Tract No. 6937 recorded in Book 485 of Maps at pages 4 through 5, Santa Clara County Records, on May 22, 1981. This vacation is not part of a development project.

On December 15, 2009, the City Council adopted a resolution which declared the Council's intention to vacate the PSE. The resolution approved a map showing the subject PSE to be vacated, set the public hearing for January 26, 2010, at 1:30 p.m. and directed the Director of Public Works to post the site with Notice of Vacation.

**ANALYSIS**

Staff has determined that the subject PSE is not needed for public purposes. All concerned utility companies have consented to the easement vacation. Upon vacation of the PSE, this encumbrance will be removed and no further action by staff would be required.

No new information regarding this vacation has been received since the December 15, 2009 Council meeting.

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

This vacation 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 to vacate the subject PSE, 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. The public was afforded the opportunity to comment on the proposed vacation during the December 15, 2009 Council meeting. This memorandum will be posted to the City's website for the January 26, 2010 Council agenda.

### **COORDINATION**

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

### **FISCAL/POLICY ALIGNMENT**

Vacating the PSE 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 easement vacation.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

CEQA: Not a project.

/s/

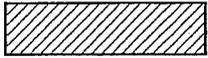
KATY ALLEN  
Director, Public Works Department

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

# PLAT MAP

# EXHIBIT B

SHOWING A PUBLIC SERVICE EASEMENT WITHIN A PRIVATE PROPERTY AT 3550 SNELL AVENUE 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*  
KATY ALLEN

DIRECTOR OF PUBLIC WORKS,  
CITY OF SAN JOSE

APPROVED THIS 4<sup>th</sup> DAY OF December 2009

