RESOLUTION NO. ______

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY VACATING A 20-FOOT PUBLIC USE EASEMENT FOR LIGHT AND AIR ALONG GRIMSBY DRIVE, AND A 12.5-FOOT PUBLIC USE EASEMENT FOR LIGHT AND AIR ALONG WESTON DRIVE AT THE SOUTHWEST CORNER OF GRIMSBY DRIVE AND WESTON DRIVE

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 if it has not been used for the purpose for which it was dedicated or acquired for five (5) consecutive years immediately preceding the proposed vacation; and

WHEREAS, the City Council intends to summarily vacate a twenty foot (20') wide Public Use Easement for Light and Air along Grimsby Drive and twelve and a half foot (12.5') Public Use Easement for Light and Air (hereinafter "Easements") constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

BEING THE PUBLIC USE EASEMENTS FOR LIGHT AND AIR WITHIN LOT 1 AS SHOWN ON MAP OF TRACT NO. 2868, FILED FOR RECORD ON DECEMBER 1, 1961 IN BOOK 140 OF MAPS AT PAGE 54, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

SAID PUBLIC USE EASEMENTS FOR LIGHT AND AIR TO BE VACATED ARE CONTAINED WITHIN THE BOUNDS OF LOT 1, AS DESCRIBED IN THAT CERTAIN GRANT DEED CONVEYED TO MARC A. EVANS, A SINGLE MAN, RECORDED SEPTEMBER 30, 2013 AS DOCUMENT NO. 22399659 OFFICIAL RECORDS OF SANTA CLARA COUNTY.

WHEREAS, on August 27, 2014, the Director of the Department of Public Works approved that certain map entitled “PLAT MAP SHOWING THE PUBLIC USE EASEMENT FOR LIGHT AND AIR TO BE VACATED AT 4406 GRIMSBY DRIVE” showing 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 August 26, 2014 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:

1. The Easements have not been used for the purpose for which they were dedicated or acquired for five consecutive years immediately prior to September 23, 2014; and

2. The Easements are not needed for present or prospective easement purposes; and

3. 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 use easements after the date of recordation of the documents identified in Section 3 of this Resolution.
ADOPTED this _____ day of ____________, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_________________________
CHUCK REED
Mayor

ATTEST:

_________________________
TONI J. TABER, CMC
City Clerk
TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: September 8, 2014

COUNCIL DISTRICT: 1

SUBJECT: SUMMARY VACATION OF PUBLIC USE EASEMENT FOR LIGHT AND AIR ON THE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF GRIMSBY DRIVE AND WESTON DRIVE

RECOMMENDATION

Adopt a resolution summarily vacating the Public Use Easement for Light and Air on the property shown as Lot 1 on the map of Tract No. 2868, recorded on December 1, 1961 in Book 140 of Maps at Page 54 of Official Records, Office of the Recorder, County of Santa Clara.

OUTCOME

Council adopts a resolution summarily vacating the Public Use Easement for Light and Air on the subject property thereby making the property subject only to the current City zoning setback requirements.

BACKGROUND

The property owner, Marc Evans, has submitted an application to vacate the Public Use Easement for Light and Air on his corner property located at 4406 Grimsby Drive (see attached map). This property is currently identified as APN 403-06-242 in the County Assessor’s Map Book. The Public Use Easement for Light and Air was created through the recordation of Tract No. 2868, thereby requiring any buildings or structures to be setback from the property line on Grimsby Drive by twenty feet (20’) and from the property line on Weston Drive by twelve-and-one-half feet (12.5’). The requested easement vacation is not associated with any project on file but will allow for the future application for a building permit by the owner consistent with current setback requirements in the Zoning Ordinance.

EXHIBIT A
ANALYSIS

Staff has determined the subject Public Use Easement for Light and Air, in its current configuration, is not consistent with the R-1-8 Single-Family Residence Zoning District, in which this property is a part. The R-1-8 Zoning District requires a twenty-five foot (25’) front setback and twelve-and-one-half-foot (12.5’) side corner setback from the property line. Through coordination with the Department of Planning, Building and Code Enforcement, staff has determined that the Public Use Easement for Light and Air is no longer needed for its original intended purpose and its vacation would not change the development pattern in the neighborhood, affect access to light and air, change the existing residential land use, or allow higher density in the neighborhood. Also, 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. Based on this reason, the easement may be summarily vacated per Streets & Highways Code Section 8333(a).

According to records, Marc Evans is the underlying fee owner of the property encumbered with the easement proposed for vacation. Upon recordation of the vacation, the land will become unencumbered by the easement and no further action by the City will be required.

EVALUATION AND FOLLOW-UP

If Council adopts this resolution summarily vacating the Public Use Easement on 4406 Grimsby Drive, no further action by the City will be required.

PUBLIC OUTREACH/INTEREST

☐ Criterion 1: Requires Council action on the use of public funds equal to $1,000,000 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. This memorandum will be posted to the City’s website for the September 30, 2014 Council Agenda.
COORDINATION

This 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.

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees in 2014 of $3,745 to process the subject vacation. These fees were deposited into the Public Works Department Services Fee Fund (Fund 001).

CEQA

Statement of Exemption (DPW File No. 3-18868)

/s/

DAVID SYKES
Director of Public Works

For questions please contact Barry Ng, Assistant Director, at 408-535-8300.
LOCATION MAP
SHOWING THAT PORTION OF GRIMSBY DRIVE
AND WESTON DRIVE TO BE VACATED

AREA TO BE VACATED

EXHIBIT A

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
PLAT MAP
SHOWING THE PUBLIC USE EASEMENTS FOR LIGHT AND AIR
TO BE VACATED AT 4406 GRIMSBY DRIVE

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

DAVID SYKES
DIRECTOR OF PUBLIC WORKS,
CITY OF SAN JOSE

APPROVED THIS __________ DAY OF AUGUST 2014

EXHIBIT A

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