SUBJECT: Adoption of a Resolution Vacating Two Existing Public Utility Easements at 662 Garland Avenue

BACKGROUND

On November 2, 2012, the City received a request to vacate two existing Public Utility Easements (PUEs) on a property located at 662 Garland Avenue. The subject PUEs are not needed for present or prospective public use. Therefore, staff recommends the City Council adopt the resolution (Attachment A) to vacate the subject PUEs as shown in Attachment B, pursuant to Section 8333 et seq. of the California Streets and Highways Code.

There is one two-foot wide PUE on lot 19 and another two-foot wide PUE on lot 20. The subject PUEs were accepted by the City as shown on Tract No. 2044 (Attachment B) entitled “Gay Gardens” and recorded with the County Recorder on December 3, 1958. There is an existing 20-unit apartment building crossing the PUEs (Attachment C) that was constructed on September 22, 1960 under building permit number 1815-7684. A new 916 square footage community building crossing the PUEs was permitted on November 7, 2012 with the understanding that the vacation would occur prior to occupancy.

Mr. Michael Silveira with BKF Engineers, project engineer authorized to act on behalf of the property owner, wrote a letter requesting the vacation for the purpose of financing and to clear title (Attachment D). Mr. Silveira indicated that there is no evidence of utilities within the subject PUE areas. Letters were sent to various utility companies, and they have no objections to the subject PUE abandonment (Attachment E – Letters of consent from utility companies).

EXISTING POLICY

General Plan Goal LT-4 – Quality Neighborhoods and Districts
Policy LT4-4: Preserve and enhance the high quality of residential neighborhoods

DISCUSSION

Pursuant to California Streets and Highways Code Section 8333, the City may summarily vacate PUEs by adopting a resolution of vacation if it finds that the PUEs have not been used for the purpose for which they were dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

The two PUEs in question have not been utilized for the purpose in which they were dedicated/acquired for five consecutive years prior to the proposed vacation request. Letters were sent to utility companies, who might potentially be impacted by this PUE abandonment process, and they have no objections to the subject
abandonment. There are no existing City utility lines and no prospective City utilities in the subject areas.

**FISCAL IMPACT**
There is no fiscal impact as a result of this PUE vacation

**PUBLIC CONTACT**
Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

**ALTERNATIVES**

1. Adopt the resolution vacating two existing Public Utility Easements at 662 Garland Avenue; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder’s office.

2. Adopt the resolution vacating two existing wide Public Utility Easements at 662 Garland Avenue with modifications and conditions as deemed appropriate by City Council; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder’s office.

3. Do not adopt the resolution vacating two existing Public Utility Easements at 662 Garland Avenue.

**RECOMMENDATION**
City staff recommends Alternative No. 1: Adopt the resolution vacating two existing Public Utility Easements at 662 Garland Avenue; and authorize the City Clerk to cause a certified copy of the resolution to be recorded with the county recorder’s office.

Reviewed by:

Kent Steffens, Director, Public Works
Prepared by: Vu Tran, Engineering Assistant II

Approved by:

Gary M. Luebbers
City Manager

**Attachments**
A. Resolution of Vacation
B. Tract No. 2044
C. Site Plan
D. Letter of request from Applicant
E. Letters of consent from utility companies
RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE VACATING TWO EXISTING PUBLIC UTILITY EASEMENTS AT 662 GARLAND AVENUE, SUNNYVALE

WHEREAS, the City of Sunnyvale, pursuant to Streets and Highways Code Section 8335, et seq., is authorized to summarily vacate public utility easement; and

WHEREAS, that certain one 2-foot wide public utility easement on lot 19 and another 2-foot wide public utility easement on lot 20 at 662 Garland Avenue, as more particularly described in Exhibit A and Exhibit B attached hereto, are not needed for present or prospective public use; and

WHEREAS, that certain two existing public utility easements (PUE’s) have no existing City facilities or other public utilities; and

WHEREAS, Pacific Gas and Electric, Comcast Cable Communications, AT&T California, and Santa Clara Valley Water District have no objection to the vacation of those certain existing PUE’s.

WHEREAS, on April 9, 2013, the City Council considered the facts related to the proposed summary vacation of those certain two existing PUE’s; and

WHEREAS, the City Council finds that the public interest will be served by extinguishing the public interest in those certain two existing PUE’s being vacated.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City of Sunnyvale finds and determines that:

   (a) Vacation of those certain two existing PUE’s is in conformity with the City Council Policy; and

   (b) Those certain two existing PUE’s are unnecessary for present or prospective public use or purpose.

2. The City Council hereby vacates those certain two existing PUE’s, as more particularly described in Exhibit A and Exhibit B, pursuant to Streets and Highways Code §§ 8335 et seq. The public utility easements are no longer necessary as there are no existing City facilities or other public utilities.

3. The City Council hereby authorizes and directs the City Clerk to record a certified copy of the resolution, attested by the City Clerk under seal, with the Santa Clara County Recorder’s Office.

Resos/2013/Easements-632 Garland Ave. 1
4. Commencing with the date of recordation of this resolution, those certain existing two PUE’s shall no longer be a public utility easement.

Adopted by the City Council at a regular meeting held on April 9, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: APPROVED:

____________________________  ______________________
City Clerk           Mayor
(SEAL)

APPROVED AS TO FORMS AND LEGALITY

Joan Borger, City Attorney
EXHIBIT “A”
Legal Description

PUBLIC UTILITY EASEMENT VACATION
Within a Portion of Lots 19 and 20, Tract No. 2044
Sunnyvale, Santa Clara County, California

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being the Public Utility Easements within Lots 19 and 20, as said lots are shown on map of Tract No. 2044 entitled “Gay Gardens”, filed for record on October 16, 1958 in Book 98 of Maps at Page 40, Records of Santa Clara County.

The Public Utility Easements to be vacated is shown on plat attached hereto and made part hereof as Exhibit “B”.

BKF Engineers

Davis Thresh, P.L.S. No. 6868
License expires 09-30-2014

Dated

10-29-2012
CERTIFICATE OF CITY CLERK

I hereby certify that the City Council of the City of Sunnyvale at its regular meeting held on the 11th day of August, 1954, duly approved and adopted the map of TRACT No. 2044, Gay Gardens, as shown herein. It is adopted on behalf of the public of serving, presentation & other periods of legal interest for dedication to public use, in conformity with the terms of the office of dedication.

Dated: August 11, 1954

Sidney R. Mitchell
City Clerk
Department of the City Council of the City of Sunnyvale, Calif.

APPROVAL BY CITY PLANNING COMMISSION

I hereby certify that the number of TRACT No. 2044, GAY GARDENS as shown herein was duly approved by the Sunnyvale City Planning Commission at a meeting at and Olivia Hall on the 21st day of October, 1954.

David E. K. Henderson
Chairman
Sunnyvale City Planning Commission

CERTIFICATE OF OWNER

This certificate is issued by the City of Sunnyvale, Calif., in accordance with the provisions of the California Subdivision Act of 1937, as amended, and the City of Sunnyvale Subdivision Act of 1953, and is hereby approved and adopted as a subdivider of the parcel of land known as TRACT No. 2044, GAY GARDENS, as shown herein.

Dated: August 11, 1954

Sidney R. Mitchell
City Clerk

AFFIDAVIT OF PREPARATION

I, Sidney R. Mitchell, do solemnly swear that I am a Registered Civil Engineer and that this map, made under my supervision during December 1957, is true and correct and is made in conformity with the provisions of the California Subdivision Act of 1937, as amended, and the City of Sunnyvale Subdivision Act of 1953.

Dated: December 12, 1957

Sidney R. Mitchell
Registered Civil Engineer

OWNERS CERTIFICATE

The state and federal laws are hereby authorized to convey to the City of Sunnyvale, Calif., the herein described parcel of land known as TRACT No. 2044, GAY GARDENS, as shown herein.

Dated: January 16, 1958

Sidney R. Mitchell
Registered Civil Engineer

CONVEYANCE TO CITY

The City of Sunnyvale, Calif., is hereby conveyed the herein described parcel of land known as TRACT No. 2044, GAY GARDENS, as shown herein.

Dated: January 16, 1958

Sidney R. Mitchell
Mayor
November 2, 2012  
BKF No. 20126047-10

Bennett Chu  
City of Sunnyvale  
Public Works Department  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

Request for Vacation of Public Utility Easement  
Garland Plaza  
662 Garland Ave, City of Sunnyvale, Ca

Dear Bennett,

On behalf of the owner, we are requesting the City to vacate 2- two foot wide Public Utility Easements (P.U.E.) that encumbers the property. The easements were created on the Tract Map No. 2044 (BK 98 M 40) dated January 14, 1958 along with the five lots (Lot 17-21) where the existing apartment complex was built.

Both of the existing P.U.E. run along the common property line between Lots 19 and 20 in the north-south direction and terminate at the 5 foot Wire Clearance Easement along the northerly property line. We believe that the P.U.E. was granted primarily for overhead utilities. According to our research with the City of Sunnyvale Public Works Department and Public Utility Companies, and field inspection, there is no evidence of utilities within these easements. For the purposes of financing and to clear title, we request the City to vacant both of the two foot wide P.U.E. located on Lots 19 and 20 per Tract Map No. 2044.

Please feel free to contact me should you have any questions.

Regards,

Michael Silveira  
Project Engineer  
BKF Engineers  
(408) 467-9125  
msilveira@b kf.com
February 7, 2013

Vu Tran
City of Sunnyvale
Department of Public Works/Engineering
456 West Olive Avenue
Sunnyvale, CA 94088

RE: Engineering Project #2012-9416
622 Garland Avenue, Sunnyvale
PG&E File No. Y13-AB-01; APN: 211-03-001

Dear Mr. Tran:

This letter is in response to a request from Joey Bernardi with BKF Engineers regarding the proposed abandonment of two 2’ wide Public Utility Easements (P.U.E.) dedicated on Lots 19 and 20, as said lots are shown on the map of Tract No. 2044 entitled “Gay Gardens”, filed for record October 16, 1958 in Book 98 of Maps at Page 40, Santa Clara County Records.

In reviewing our records, PG&E has no facilities within the aforementioned P.U.E.’s and therefore has no objections to the proposed abandonment of them.

If you have any questions concerning this matter, please contact me at the return mailing address, (408) 282-7347, or DAN9@pge.com.

Sincerely,

David Neal
Lead Land Technician
January 14th, 2013

Mr. Vu Tran, P.E.
City of Sunnyvale
Department of Public Works / Engineering
456 West Olive Avenue
Sunnyvale, CA 94088

Subject: Vacation of Public Utility Easement
(APN: 211-03-01) 622 Garland Ave, Sunnyvale

Dear Mr. Tran,

This endorsement letter is in response to the property owner's request for AT&T California's concurrence for the vacation of the two foot wide Public Utility Easement located along the Easterly property line of Lot 19 and the two foot wide Public Utility Easement located along the Westerly property line of Lot 20, 622 Garland Ave, in Sunnyvale, CA. Said easements are located on Lots 19 & 20 of Tract No. 2044 entitled "Gay Gardens", recorded October 16th, 1958 in Book 98 of Maps at page 40, County of Santa Clara.

Engineering has determined the vacation described above will not comprise AT&T's facilities or P.U.E. rights. Therefore, AT&T California approves the vacation as requested.

AT&T California approves BKF's proposed vacation request and plat as detailed in exhibits "A" & "B" dated October 29th, 2012.

If you have any questions, please feel free to contact me.

Regards,

Ed Beyer
Public Works Coordinator
Right of Way Manager
AT&T California
(408) 635-8878
January 2, 2013

VIA USPS

Mr. Vu Tran
City of Sunnyvale Public Works
456 West Olive Ave.
Sunnyvale, CA 94088

Subject: Abandonment of Public Utility Easement ("PUE") at 622 Garland Avenue, Sunnyvale, California.
APN# 211-03-001, Santa Clara County

Dear Mr. Tran:

Comcast has reviewed the location of its equipment in relation to the subject PUE. Comcast has no equipment located in said PUE, and therefore has no objection to the abandonment of the PUE as shown in the attached Exhibits.

I can be reached at 925-424-0153 or Jennifer_Klepperich@cable.comcast.com if you have any questions.

Best Regards,

Jennifer Klepperich
Comcast Real Estate
EXHIBIT “A”
Legal Description

PUBLIC UTILITY EASEMENT VACATION
Within a Portion of Lots 19 and 20, Tract No. 2044
Sunnyvale, Santa Clara County, California

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being the Public Utility Easements within Lots 19 and 20, as said lots are shown on map of Tract No. 2044 entitled “Gay Gardens”, filed for record on October 16, 1958 in Book 98 of Maps at Page 40, Records of Santa Clara County.

The Public Utility Easements to be vacated is shown on plat attached hereto and made part hereof as Exhibit “B”.

BKF Engineers

Davis Thresh, P.L.S. No. 6868
License expires 09-30-2014

Dated

10-29-2012
GARLAND AVENUE
(PUBLIC STREET)

2' PUBLIC UTILITY EASEMENT PER 98 M 40, TO BE VACATED

2' PUBLIC UTILITY EASEMENT VACATION

LOT 19
TRACT NO. 2044
98 M 40

LOT 20
TRACT NO. 2044
98 M 40

LOT 21
TRACT NO. 2044
98 M 40

MID-PENINSULA
CARROLL-STREET, INC.
DOC. 19318773

2' PUBLIC UTILITY EASEMENT VACATION

2' PUBLIC UTILITY EASEMENT PER 98 M 40, TO BE VACATED

5' PUBLIC UTILITY EASEMENT PER 98 M 40

SCALE IN FEET

LEE & TSAO
DOC. 16758631

BHANDAL
DOC. 15115460

HAGHSHENAS
DOC. 16748939

EXHIBIT "B"
PLAT TO ACCOMPANY
LEGAL DESCRIPTION

SUNNYVALE, SANTA CLARA COUNTY, CALIFORNIA
K:\SUR12\126047\DWG\PLATS\PUE VACATION PLAT.dwg

Subject: PUBLIC UTILITY EASEMENT VACATION
GARLAND PLAZA APARTMENTS, SUNNYVALE

Job No. 20126047
SCALE: 1"=20'

By JG Date 10-29-12 Chkd. DT

SHEET 1 OF 1
January 9, 2013

Mr. Vu Tran
City of Sunnyvale
Department of Public Works/Engineering
456 West Olive Avenue
Sunnyvale, CA 94088

Subject: Engineering Project No. 2012-9416
662 Garland Ave, Sunnyvale

Dear Mr. Tran:

The Santa Clara Valley Water District (District) received a request from Mr. Joey Bernardi at BKF Engineers to comment on the proposed abandonment of (2) two-foot wide Public Utility Easements located at 662 Garland Avenue in Sunnyvale (APN: 211-03-001).

We have reviewed the existing Public Utility Easements as described on the Gay Gardens Tract Map (Tract No. 2044), dated January 6, 1958. The two Public Utility Easements run north-to-south, parallel to the common lot line between lot 19 and lot 20. The District does not have any facilities at this location nor do we have any use for the Public Utility Easement through this site. The District has no objections to the abandonment of this easement.

If you should have any further questions, please reference District File No. 32800 on any future correspondence.

Sincerely,

Jenny Van Truong
Engineering Intern
Community Projects Review Unit

cc: Mr. Joey Bernardi
BKF Engineers
1650 Technology Drive,
Suite 650
San Jose, CA 95110

S. Tippets, E. Hayes, File

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