

Date of Hearing: July 13, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
SB 236 (Beall) – As Amended June 24, 2015

SENATE VOTE: 36-0

SUBJECT: Public streets, highways, and public service easements.

SUMMARY: Authorizes the City of San Jose to summarily vacate a public staircase. Specifically, **this bill:**

- 1) Authorizes the City of San Jose, until January 1, 2018, to summarily vacate a public service easement located between two specific streets if it finds that the vacation will protect the public safety or otherwise serve the public interest and convenience.
- 2) Authorizes the city to reserve and except from the vacation an easement to construct, maintain, operate, replace, remove, and renew a non-vehicular pathway for public use.
- 3) Makes legislative and findings that the need for this special law is justified because of the "unique circumstances" facing the City of San Jose with regard to the public service easement.

EXISTING LAW:

- 1) Authorizes a local agency to summarily vacate a public service easement under one of the following conditions:
 - a) The public service easement has not been used for its intended purpose for a prolonged period;
 - b) The date of the public easement dedication is at least a year prior to, but less than five years from, the date of the proposed vacation, and the easement has not been used continuously since that date; or
 - c) The easement has been superseded by relocation and there are no other public facilities located within the easement.
- 2) Prohibits summary vacation of a public easement if there are in-place public utility facilities that are in use and would be affected by the vacation.
- 3) Sets forth procedures local agencies are to follow to vacate or reserve easements.

FISCAL EFFECT: Unknown

COMMENTS: The author introduced SB 236 to allow the City of San Jose to enact a curfew and other regulations on what is known as the Grand Staircase in the Communications Hill area of the city. The Grand Staircase is a 200-step staircase that leads through a residential area to the top of the hill. The staircase was designed to be a highlight of a walkable community envisioned to include residential, commercial-retail space, and industrial parks, all linked with trails and

serviced by public transit. However, thanks to social media, the staircase has become a destination recreational facility, drawing people from throughout the city for outdoor workouts, including pre-dawn fitness boot camps. The popularity of the staircase also attracts illegal activities such as drug use, public drinking, litter, vandalism, and other misconduct at all hours of the day and night.

The City of San Jose is sponsoring SB 236 so that it can impose a curfew on the staircase with the hopes that it can curb excessive activities that annoy nearby residents during late-night and early-morning hours.

The staircase is dedicated as a pedestrian access easement, private ingress and egress easement, emergency access easement, and public service easement. However, according to city attorneys, these designations do not allow the city to impose a curfew on the staircase. The city is seeking to vacate the public service easement but reserve an easement for something akin to a park trail, for which it has the authority to impose a curfew.

Committee concerns: SB 236 presents an unorthodox solution to a frustrating neighborhood problem. The City of San Jose would like to be able to keep people off the Grand Staircase during late-night and early-morning hours but the city has found few tools with which to accomplish this. For example, existing law already authorizes local governments to summarily vacate public easements but only under a few very specific conditions, most notably that the easement has not been used for the purpose for which it was dedicated or acquired. In the case of San Jose's Grand Staircase, this is most definitely not the case. The staircase, which was dedicated as a pedestrian easement, is used extensively for pedestrian traffic.

Also, a local agency can impose temporary closures or curfews on public easements if it finds that doing so is in the interest of public safety. In the case of the staircase, the city suggests that such a finding is not supportable because, for example, there are no records of heightened police activity on the staircase to suggest a threat to public safety.

Furthermore, the city has signs posted to notice enforcement against nuisance activities such as excessive noise, littering, loitering, obstructing the stairs, and vandalism. These ordinances are insufficient to curb the activities that are vexing the Communications Hill residents such as loud conversations in the middle of the night just a few feet from front doors of nearby residents.

The solution presented in SB 236 is not a perfect one. Keeping the public from accessing public right of way should not be taken for granted. However, city officials have few other options in the case of the wildly unforeseen popularity of the Grand Staircase. The city is struggling to manage this attractive nuisance and SB 236 provides some relief.

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Jose (Sponsor)
Strangis Properties
Tuscany Hills Homeowners' Association Board of Directors

Opposition

None on file

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