File No. 120670 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** June 25, 2012

Board of Supervisors Meeting **Date** _____

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Completed by: Alisa Miller **Date** June 22, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

(* See Item No. 1 / File No. 120670 for all attachments *)

FILE NO. 120670 ORDINANCE NO.

[Street Vacation Order - San Francisco Wholesale Produce Market - Portions of Jerrold and Kirkwood Avenues, Selby, Rankin, and Milton I. Ross Streets, and Lettuce Lane]

Ordinance: 1) ordering the vacation of Jerrold Avenue between Rankin Street and Toland Street, Milton I Ross Street between Innes Avenue and Kirkwood Avenue, Kirkwood Avenue between Rankin Street and the proposed boundary of the San Francisco Wholesale Produce Market, Lettuce Lane between Jerrold Avenue and Kirkwood Avenue, portions of Selby Street between Innes Avenue and Kirkwood Avenue, and a portion of Rankin Street between Jerrold Avenue and Innes Avenue, collectively for purposes of the San Francisco Wholesale Produce Market Retention and Expansion, subject to certain conditions; 2) accepting Department of Public Works Order No. 180308; 3) approving an interdepartmental transfer of the area to be vacated from the Department of Public Works to the Real Estate Division at the time the vacation is final and effective; 4) making environmental findings and findings of consistency with the City's General Plan and Planning Code Section 101.1; and 5) authorizing official acts in connection with this Ordinance.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings

(a) On _____, 2012, the Board of Supervisors adopted Resolution No. _____, a copy of which is on file with the Clerk of the Board of Supervisors in File No. _____, being a Resolution declaring its intention to order the vacation of Jerrold Avenue between Rankin Street and Toland Street, Milton I Ross Street between Innes

Avenue and Kirkwood Avenue, Kirkwood Avenue between Rankin Street and the proposed boundary of the San Francisco Wholesale Produce Market, Lettuce Lane between Jerrold Avenue and Kirkwood Avenue, portions of Selby Street between Innes Avenue and Kirkwood Avenue, and a portion of Rankin Street between Jerrold Avenue and Innes Avenue (collectively, the "Vacation Area"). The location and extent of the Vacation Area is shown on the Department of Public Works' SUR Map No. 2012-002, dated May 29, 2012. A copy of said map is on file with the Clerk of the Board of Supervisors in File No. 120670.

(b) The Clerk of the Board of Supervisors did transmit to the Director of the Department of Public Works a certified copy of the Resolution of Intention, and the Director of the Department of Public Works did cause notice of adoption of such Resolution to be posted and published in the manner required by law.

(c) When such matter was considered as scheduled by the Board of Supervisors at its regular meeting held in the City Hall, San Francisco, on _____, 2012, beginning at approximately _____ P.M., the Board heard all persons interested in such vacation.

(d) The vacation of the Vacation Area is necessary for the complete implementation of the San Francisco Wholesale Produce Market retention and expansion project (the "Project), in conformance with the master lease (the "Lease"). Approval of the Lease is the subject of companion legislation and a copy of said Lease is on file with the Clerk of the Board of Supervisors in File No. 120530 and incorporated herein by reference.

(e) The City's Planning Department issued a Final Mitigated Negative Declaration ("FMND"), dated July 5, 2011, with respect to the proposed Project, and the City and County of San Francisco Market Corporation ("CCSFMC"), a California non-profit corporation, has entered into an Agreement to Implement Improvement and Mitigation Measures identified by the Planning Department in the FMND. A copy of the FMND is on file with the Clerk of the

Board of Supervisors in File No. 120670. In companion legislation addressing approval of the Lease, a copy of which is on File with the Clerk of the Board of Supervisors in File No. 120530, the Board adopted environmental findings for purposes of the project. Said findings are incorporated herein by reference as though fully set forth herein for purposes of this Ordinance.

(f) On September 6, 2011, the City Planning Department found that the actions related to the Project, as contemplated in the Lease and herein, were consistent with the General Plan and the eight priority policies of Planning Code Section 101.1 for the actions. A copy of this letter is on file with the Clerk of the Board of Supervisors in File No. 120670 and is incorporated by reference as though fully set forth herein. The Board of Supervisors adopts as its own said consistency findings.

(g) In DPW Order No. 180308, dated May 30, 2012, the Director of the Department of Public Works ("DPW Director") determined: (i) the Vacation Area is unnecessary for the City's present or prospective public street purposes, subject to satisfaction of the condition specified below; (ii) that portion of Kirkwood Avenue east of Rankin Street shall be deemed vacated upon the final and effective date of this Ordinance; (iii) the remainder of the Vacation Area should be conditionally vacated so that it is not deemed final and effective until required under the terms and conditions of the Lease; (iv) until the time that the condition specified in Subsection (iii) is satisfied, the Vacation Area shall remain dedicated public streets; (v) the interdepartmental transfer for each portion of the Vacation Area from the jurisdiction of the Department of Public Works to the Division of Real Estate will further a proper public purpose by preserving the subject area for Production, Distribution and Repair ("PDR") industries, in particular, the San Francisco Wholesale Produce Market, and shall occur simultaneously with the street vacation becoming final and effective for that street segment ; (vi) the interdepartmental transfer shall occur simultaneously with the street vacation being final and

effective; and (vii) there are no physical public and private utilities affected by the vacation of the Vacation Area except as stated below. A copy of the DPW Order is on file with the Clerk of the Board of Supervisors in File No. 120670 and incorporated herein by reference.

(h) Other than that portion of Kirkwood Avenue east of Rankin Street, the DPW Director further recommended that the Board acknowledge the transfer of jurisdiction of the Vacation Area to the Division of Real Estate is subject to: (i) the right of the San Francisco Public Utilities Commission (the "PUC") to have continued access to the Vacation Area for purposes of maintaining its facilities and (ii) the public interest, convenience and necessity require that prior to the final and effective date of the Street Vacation, the Division of Real Estate and the PUC enter into a memorandum of understanding concerning access to and maintenance of said PUC facilities.

(i) Other than that portion of Kirkwood Avenue east of Rankin Street, the DPW Director further recommended that the Board acknowledge the transfer of jurisdiction of the Vacation Area to the Division of Real Estate is subject to: (i) the right of MCI Communications Corp. ("Verizon") to have continued access to the Vacation Area for purposes of maintaining its facilities and (ii) the public interest, convenience and necessity require that prior to the final and effective date of the Street Vacation, the Division of Real Estate and the Verizon enter into a Permit Agreement concerning access to and maintenance of said Verizon facilities.

(j) Depending on a future assessment of its service provision, Pacific Gas and Electric ("PG&E") may determine that it needs continued access to the Vacation Area for purposes of its facilities. For this reason and as required under the 1930 Franchise Agreement between the City and PG&E, the DPW Director and the PUC General Manager recommend that any agreement with or permit or similar right granted authorizing PG&E to have continued access to the Vacation Area for purposes of installing and maintaining any facilities there require that PG&E, at its sole expense, remove its existing overhead facilities from the Vacation Area and

install any new facilities there underground. In furtherance of this recommendation, the public interest, convenience and necessity require that prior to the final and effective date of the street vacation, the Division of Real Estate, PUC, or DPW, if necessary, enter into an agreement with PG&E for the removal of PG&E's existing overhead utility facilities and, if needed, the installation of any new underground facilities in the Vacation Area at PG&E's sole expense pursuant to a permit or other document with PG&E that will allow containing access to and maintenance of any underground PG&E facilities. The finding in this Section (i) is made in accordance with Streets and Highways Code Section 8340(c) and is based solely on PG&E undergrounding its facilities and paying the full cost related thereto. Should PG&E fail to satisfy these conditions in a timely manner as determined by the City, PG&E's rights in the Vacation Area shall be extinguished pursuant to Sections (k) and (p) below and have no impact on the vacation being final and effective as set forth herein. That portion of Kirkwood Avenue east of Rankin Street is excluded from this Section (j).

(k) The DPW Director also recommended that the public interest, convenience, and necessity require that, except as specifically provided above, no other easements or other rights should be reserved for any public or private utilities or facilities that are in place in such Vacation Area and that any rights based upon any such public or private utilities or facilities should be extinguished.

(l) Pursuant to the Streets and Highways Code Section 892, the DPW Director also found that the Vacation Area is unnecessary for non-motorized transportation as there are multiple streets surrounding that Vacation Area that remain available for such transportation and those members of the public availing themselves of non-motorized transportation will not be inconvenienced by the proposed street vacation.

(m) The vacation of the Vacation Area is being taken pursuant to California Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

(n) From all the evidence submitted at the public hearing noticed in the Resolution No. _____ and the associated materials on file with the Clerk of the Board in File No. 120676, the Board of Supervisors adopts the findings of the DPW Director in DPW Order No. 180308 and determines that the Vacation Area, as described in said Resolution, is unnecessary for present or prospective public use, subject to the conditions described in this Ordinance.

(o) Pursuant to the Streets and Highways Code Section 892, the Board hereby finds and determines that the Vacation Area is unnecessary for non-motorized transportation, and therefore has no use for a non-motorized transportation facility.

(p) With the exception of the PUC, Verizon, and PG&E rights described above, the public interest, convenience and necessity require that no other easements or other rights be reserved for any public or private utilities or facilities that are in place in the Vacation Area and that any rights based upon any such public or private utilities or facilities are extinguished.

(q) Pursuant to the General Plan determination mentioned above, the City desires to retain the ability to rededicate for public street use: (i) those portions of Jerrold Avenue (proposed to be vacated) consistent with the dimensions of Jerrold Avenue east of Rankin Street and west of Toland Street, and (ii) those portions of Selby Street (proposed to be vacated) consistent with the dimensions of the Selby Street north of Innes Avenue and south of Kirkwood Avenue, upon the expiration or termination of the lease. Accordingly, the Produce Market lessee shall not perform or permit any improvements on those portions of the Vacation Area that would be inconsistent with future use as a public street, other than improvements which may readily be removed at the expiration or termination of the Lease.

(r) The public interest and convenience require that the vacation be done as declared in this Ordinance.

Section 2. The Vacation Area, as shown on SUR Map No. 2012-002, is hereby ordered conditionally vacated pursuant to California Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a), subject to the following condition: the order of vacation shall be deemed final and effective as required under the terms and conditions of the Lease. Until the time that this condition is satisfied, the Vacation Area shall remain a dedicated public street. Notwithstanding the above, the portion of Kirkwood Avenue east of Rankin Street shall be vacated pursuant to California Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a) immediately upon the final and effective date of this Ordinance.

Section 3. Notwithstanding the provisions of Administrative Code Chapter 23, the Board of Supervisors hereby: (a) approves an interdepartmental transfer of the Vacation Area from the Department of Public Works to the Real Estate Division; provided, however, that such transfer shall occur simultaneously with the street vacation becoming final and effective for that street segment as set forth in this Ordinance and shall and (b) delegates authority to the Director of the Division of Real Estate, in consultation with the City Attorney's Office and other effected departments, to enter into a permit or other agreement with PG&E and Verizon, if necessary, concerning access to and maintenance of underground PG&E facilities and Verizon facilities in the Vacation Area as set forth in this Ordinance.

Section 4. The Board of Supervisors hereby directs the Clerk of the Board of Supervisors to transmit to the Director of Public Works a certified copy of this Ordinance so that this Ordinance may be recorded or officially lodged together with the other documents necessary to effectuate the interdepartmental transfer of the Vacation Area.

Section 5. All actions heretofore taken by the officers of the City with respect to this Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board, Director of the Division of Real Estate, County Surveyor, the General Manager of the PUC,

and the Director of Public Works are hereby authorized and directed to take any and all actions which they or the City Attorney may deem necessary or advisable in order to effectuate the purpose and intent of this Ordinance, including, but not limited to, the filing of the Ordinance in the Official Records of the City and County of San Francisco, entering into an agreement with PG&E for the removal of PG&E's existing overhead utility facilities and, if necessary, the installation of any new underground facilities in the Vacation Area as set forth in this Ordinance, authorizing various City department to enter into a permit or other agreement with PG&E and Verizon, if necessary, concerning access to and maintenance of PG&E facilities and Verizon in the Vacation Area as set forth in this Ordinance, and designating the Real Estate Division as the City department with jurisdiction over the Vacation Area.

Section 7. Effective Date. This ordinance shall become effective 30 days from the date of passage.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
John D. Malamut
Deputy City Attorney