

1 [Street Vacation Order - Transbay Transit Center]

2

3 **Ordinance ordering the vacation of portions of the public right-of-way below and/or**  
4 **above Natoma Street, Minna Street, First Street, Fremont Street, Beale Street, Harrison**  
5 **Street, Folsom Street, Clementina Street, Tehama Street, Howard Street, Second Street,**  
6 **and Oscar Alley within the Transit Center Project area; quitclaiming the City's interest**  
7 **in the vacation areas to the Transbay Joint Powers Authority; accepting Department of**  
8 **Public Works Order No. 179,054; making environmental findings and findings of**  
9 **consistency with the City's General Plan and Planning Code Section 101.1; and**  
10 **authorizing official acts in connection with this Ordinance.**

11 Note: Additions are *single-underline italics Times New Roman*;  
12 deletions are *strikethrough italics Times New Roman*.  
13 Board amendment additions are double underlined.  
14 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings

16 (a) On \_\_\_\_\_, 2011, the Board of Supervisors adopted Resolution No.  
17 \_\_\_\_\_, a copy of which is on file with the Clerk of the Board of Supervisors in  
18 File No. \_\_\_\_\_, being a Resolution declaring its intention to order the vacation of  
19 portions of the public right-of-way below and/or above Natoma Street, Minna Street, First  
20 Street, Fremont Street, Beale Street, Harrison Street, Folsom Street, Clementina Street,  
21 Tehama Street, Howard Street, Second Street, and Oscar Alley within the Transit Center  
22 Project area (collectively, the "Vacation Area"). The location and extent of the Vacation Area  
23 is shown on the Department of Public Works' draft SUR Map Nos. 6009, 7009, and 8009,  
24 dated \_\_\_\_\_, 2010. Copies of these maps are on file with the Clerk of the  
25 Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein by reference.

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

5 (c) When such matter was considered as scheduled by the Board of Supervisors at its  
6 regular meeting held in the City Hall, San Francisco, on \_\_\_\_\_, 2011,  
7 beginning at approximately \_\_\_\_\_ P.M., the Board heard all persons interested in such  
8 vacation.

9 (d) The vacation of the Vacation Area is necessary for the Transbay Joint Powers  
10 Authority ("TJPA") to construct the Transbay Transit Center and associated bus ramps.

11 (e) On June 15, 2004, this Board approved Motion No. M04-67 affirming the Planning  
12 Commission's certification of the final environmental impact report for the Transbay  
13 Terminal/Caltrain Downtown Extension/Redevelopment Project in compliance with the  
14 California Environmental Quality Act ("CEQA") (California Public Resources Code sections  
15 21000 et seq.) A copy of said Motion is on file with the Clerk of the Board of Supervisors in  
16 File No. \_\_\_\_\_ and is incorporated herein by reference.

17 (f) The Board of Supervisors in Resolution No. 612-04, adopted environmental  
18 findings in relation to the Transbay Terminal, Caltrain Downtown Extension, and Transbay  
19 Redevelopment Plan. Copies of said Resolution and supporting materials are in the Clerk of  
20 the Board of Supervisors File No. 041079. The Board of Supervisors in Ordinance No. 124-  
21 05, as part of its adoption of the Transbay Redevelopment Plan, adopted additional  
22 environmental findings. Copies of said Ordinance and supporting materials are in the Clerk of  
23 the Board of Supervisors File No. 050184. Said Resolution and Ordinance and supporting  
24 materials are incorporated by reference herein for the purposes of this Ordinance.  
25

1 (g) On April 9, 2009, the TJPA approved Resolution No. 09-019, adopting the Fifth  
2 Addendum to the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project  
3 FEIS/EIR finding that the proposed vacation of the Vacation Area will not trigger the need for  
4 subsequent environmental review pursuant to California Public Resources Code section  
5 21166 and sections 15162 and 15163 of the CEQA Guidelines. A copy of this Resolution is  
6 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
7 incorporated by reference as though fully set forth herein. The Board of Supervisors adopts  
8 as its own said findings pursuant to CEQA.

9 (h) On August 5, 2010, the Planning Commission adopted Motion No. 18159, making  
10 findings of consistency with the General Plan and the eight priority policies of Planning Code  
11 Section 101.1 for the actions contemplated herein. A copy of this Motion is on file with the  
12 Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated by reference  
13 as though fully set forth herein. The Board of Supervisors adopts as its own said consistency  
14 findings.

15 (i) In DPW Order No. \_\_\_\_\_, dated \_\_\_\_\_, 2011, the  
16 Director of the Department of Public Works determined: (i) the Vacation Area is unnecessary  
17 for the City's present or prospective public street, sidewalk, and service easement purposes;  
18 (ii) conveyance of the Vacation Area to the TJPA for a sales price of \$1.00 will further a proper  
19 public purpose, including, but not limited to, promoting and facilitating the use of public  
20 transportation, as confirmed by the Director of the Real Estate Division; (iii) there are no  
21 physical public or private utilities affected by the vacation of the Vacation Area except as  
22 stated below; (iv) the TJPA, with oversight from the Department of Public Works, is  
23 collaborating with utility agencies and other parties for the relocation of these utilities; and (v)  
24 the vacation is subject to retention of certain time-limited rights for public and private utilities  
25

1 as described further herein. A copy of the DPW Order is on file with the Clerk of the Board of  
2 Supervisors in File No. \_\_\_\_\_ and incorporated herein by reference.

3 (j) The public interest, convenience and necessity require that the City reserve and  
4 except from the vacation non-exclusive easements for the benefit of those in-place and  
5 functioning utilities, including City utilities, PG&E, IPN, AT&T, AT&T Legacy T, Verizon, TCG,  
6 Qwest, Comcast, Level 3, and AboveNet utilities and facilities, that are currently located within  
7 the Vacation Area, to the extent necessary to maintain, operate, repair and remove existing  
8 lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and  
9 fixtures for the operation of said utilities, together with reasonable access to the foregoing  
10 utilities and facilities for the purposes set forth above. The reservation stated herein is time-  
11 limited because said utilities are to be relocated from these easement locations. The TJPA is  
12 responsible for relocating the City utilities and facilities. PG&E, IPN, AT&T, AT&T Legacy T,  
13 Verizon, TCG, Qwest, Comcast, Level 3, and AboveNet are responsible for relocating their  
14 own utilities and facilities. Accordingly, reserved easements for the City utilities shall expire  
15 when the TJPA relocates the utility to the satisfaction of the City. Reserved easements for  
16 PG&E, IPN, AT&T, AT&T Legacy T, Verizon, TCG, Qwest, Comcast, Level 3, and AboveNet  
17 shall expire at the time the Department of Public Works grants to the TJPA a general  
18 excavation permit to undertake pre-trench work at the location of the subject reserved  
19 easement(s).

20 (k) As part of this vacation action, the City recognizes that private encroachments  
21 permitted by the Department of Public Works, other than utilities covered in the paragraph  
22 above, may exist within the Vacation Area. To the extent that such encroachments are  
23 incompatible with the Transbay Program, the City shall take the necessary steps, consistent  
24 with the law, to revoke permission for those encroachments. The City reserves and excepts  
25

1 from the vacation any private encroachment rights that have been validly permitted by the  
2 Department of Public Works as of the date of this Ordinance, until such permission is revoked  
3 by the City.

4 (l) The public interest, convenience, and necessity require that, except as specifically  
5 provided in this Ordinance, no other easements or other rights be reserved for any public or  
6 private utilities or facilities that are in place in such Vacation Area and that any rights based  
7 upon any such public or private utilities or facilities are extinguished.

8 (m) The Director of the Department of Public Works also recommends that the  
9 vacation of the Vacation Area is conditioned upon the following restrictions: (i) that the  
10 property can be used only for the Transbay Transit Center or related bus ramps and rail  
11 extensions; (ii) the property cannot be conveyed to another party for another use, provided,  
12 however, that the TJPA may convey the property to another governmental entity if the  
13 transferee would own and operate the Transit Center or related bus ramps and rail  
14 extensions; and (iii) if the TJPA abandons the use, or never completes construction of any  
15 portion of the Transit Center or its bus ramps, the associated vacated areas will automatically  
16 revert back to the City and County of San Francisco in fee simple; and (iv) that the TJPA shall  
17 retain 6 to 11 feet of public right-of-way width (depending on location) vacated on First and  
18 Fremont Streets as public sidewalk except for limited areas around the base of the Transit  
19 Center basket columns where small barriers will be installed to protect pedestrians and the  
20 columns. The Board of Supervisors adopts as its own, the recommendations of the Director  
21 of the Department of Public Works as set forth in DPW Order No. \_\_\_\_\_  
22 concerning the vacation of the Vacation Area and other actions in furtherance thereof.

23 (n) The California Department of Transportation ("Caltrans") has asserted certain real  
24 property interests in portions of the Vacation Area. As part of a separate future action before  
25

1 this Board of Supervisors, Caltrans will offer and the City will consider the acceptance of a  
2 quitclaim of Caltrans' rights. To the extent any of the areas subject to this future action are  
3 coterminous with the Vacation Area that is the subject of this legislation, this Board of  
4 Supervisors hereby authorizes and directs the Director of the Division of Real Estate, County  
5 Surveyor, and Director of Public Works to take any and all actions which they or the City  
6 Attorney may deem necessary or advisable in order to quitclaim to the TJPA any new rights in  
7 the Vacation Area that the City acquires from Caltrans.

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

10 (p) From all the evidence submitted at the public hearing noticed in the Resolution No.  
11 \_\_\_\_\_ and the associated materials on file with the Clerk of the Board in File No.  
12 \_\_\_\_\_, the Board of Supervisors finds that the Vacation Area, as described in said  
13 Resolution, is unnecessary for present or prospective public use, subject to the conditions  
14 described in this Ordinance.

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

18 (r) With the exception of the easements and private encroachment rights described  
19 above, the public interest, convenience and necessity require that no other easements or  
20 other rights be reserved for any public or private utilities or facilities that are in place in the  
21 Vacation Area and that any rights based upon any such public or private utilities or facilities  
22 are extinguished.

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

25

1 Section 3. Except as set forth in Section 4 below, the Vacation Area, as shown on draft  
2 SUR Map Nos. 6009, 7009, and 8009, is hereby ordered vacated and pursuant to California  
3 Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

4 Section 4. The vacation of the Vacation Area is conditioned upon the following  
5 restrictions: (i) that the property can be used only for the Transbay Transit Center or related  
6 bus ramps and rail extensions; (ii) the property cannot be conveyed to another party for  
7 another use, provided, however, that the TJPA may convey the property to another  
8 governmental entity if the transferee would own and operate the Transit Center or related bus  
9 ramps and rail extensions; and (iii) if the TJPA abandons the use, or never completes  
10 construction of any portion of the Transit Center or its bus ramps, the associated vacated  
11 areas will automatically revert back to the City and County of San Francisco in fee simple; (iv)  
12 that the TJPA shall retain 6 to 11 feet of public right-of-way width (depending on location)  
13 vacated on First and Fremont Streets as public sidewalk except for limited areas around the  
14 base of the Transit Center basket columns where small barriers will be installed to protect  
15 pedestrians and the columns; and (v) subject to the time-limited reserved easements and  
16 private rights described herein.

17 Section 5. Notwithstanding the provisions of Administrative Code Chapter 23, the  
18 Board of Supervisors hereby approves the quitclaim deeds to the TJPA in substantially the  
19 form on file with the Clerk of the Board of Supervisors and authorizes the Director of Property  
20 to execute City quitclaim deeds for the Vacation Area to the TJPA at the time when said  
21 deeds and associated documentation are finalized and properly certified. A copy of said draft  
22 deed(s) is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
23 incorporated herein by reference.

1           Section 6. The Board of Supervisors hereby directs the Clerk of the Board of  
2 Supervisors to transmit to the Director of Public Works a certified copy of this Ordinance so  
3 that this Ordinance may be recorded together with the other documents necessary to  
4 effectuate the quitclaim of the Vacation Area to the TJPA.

5           Section 7. All actions heretofore taken by the officers of the City with respect to this  
6 Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board,  
7 Director of the Division of Real Estate, County Surveyor, and Director of Public Works are  
8 hereby authorized and directed to take any and all actions which they or the City Attorney may  
9 deem necessary or advisable in order to effectuate the purpose and intent of this Ordinance  
10 (including, without limitation, the refinement and finalization of the Department of Public  
11 Works' draft SUR Map Nos. 6009, 7009, and 8009, dated \_\_\_\_\_, 2010; the  
12 drafting of legal descriptions for the Vacation Area; the finalization and certification of the  
13 quitclaim deeds for the Vacation Area, the execution of such deeds on behalf of the City, and  
14 the recording of such deeds at the City and County of San Francisco Office of the Assessor-  
15 Recorder; the filing of the Ordinance in the Official Records of the City and County of San  
16 Francisco; the revocation of any permit to encroach upon the Vacation Area that conflicts with  
17 the Transbay Transit Center program; and confirmation of satisfaction of any of the conditions  
18 to the effectiveness of the vacation of the Vacation Area hereunder and execution and  
19 delivery of any evidence of the same, which shall be conclusive as to the satisfaction of such  
20 conditions upon signature by any such City official or his or her designee).



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

3 By: \_\_\_\_\_  
4 John D. Malamut  
5 Deputy City Attorney  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25