

1 [Ordering vacation of the Ingleside Path.]

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3 **Ordinance ordering the vacation of the Ingleside Path right-of-way between Ocean**  
4 **Avenue and Corona Street and Urbano and Head Streets subject to reservations of**  
5 **certain utility easements in the vacated area; authorizing the quit claim of the City's**  
6 **interest in the vacated right-of-way pursuant to the terms of the conveyancing**  
7 **documents; declaring such paths abandoned; adopting environmental findings and**  
8 **findings that such actions are consistent with the City’s General Plan and the priority**  
9 **policies of Planning Code Section 101.1; and authorizing official acts in connection**  
10 **with this Ordinance.**

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

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

17 Section 1. Findings.

18 (a) On \_\_\_\_\_, 2008, the Board of Supervisors of the City and County of San  
19 Francisco (the “City”) adopted Resolution No. \_\_\_\_\_ (the “Resolution of Intention”), a copy  
20 of which is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
21 incorporated by reference herein, being a Resolution of declaring the Board's intent to order  
22 the vacation of the Ingleside Path right-of-way between Ocean Avenue and Corona Street and  
23 Urbano and Head Streets (the "Vacation Area"). The location and extent of the Vacation Area  
24 is shown in the Department of Public Works Map Nos. 5005 and 6005, both dated March 18,  
25 2008, copies of which is on file with the Clerk of the Board of Supervisors in File No.  
\_\_\_\_\_ and incorporated by reference herein.

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  
6 its regular meeting held in the City Hall, San Francisco, on \_\_\_\_\_, 2008, the Board  
7 heard all persons interested in such vacation.

8 (d) The vacation of the Vacation Area is being sought in order to facilitate (a)  
9 improved safety of adjacent residents and citizens and appropriate treatment for substantial  
10 existing private encroachments on the Ingleside Path and (b) a quit claim of the City's interest  
11 in the Path to the abutting property owners. Copies of draft quit claim deeds for both areas  
12 are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and are hereby  
13 declared to be a part of this Ordinance by reference herein. This result is the outcome of  
14 extensive and extended discussions and negotiations during the last 3 years between  
15 Supervisor Elsbernd, the Department of Public Works, Department of Real Estate, Ingleside  
16 Terrace Homeowners' Association, property owners adjacent to the Ingleside Path, and other  
17 interested stakeholders.

18 (e) In a letter dated October 2, 2007 (the "Planning Department Letter"), the City  
19 Planning Department determined that (a) the vacation and other actions in furtherance  
20 thereof, including, without limitation, the vacation of the Vacation Area and quit claim of the  
21 City's interest therein, are, on balance, not inconsistent with the General Plan and Planning  
22 Code Section 101.1 and (b) the actions contemplated in this Ordinance are in compliance with  
23 the California Environmental Quality Act (California Public Resources Code Sections 21000 et  
24 seq.). A copy of the Planning Department Letter is on file with the Clerk of the Board of  
25 Supervisors in File No. \_\_\_\_\_ and is incorporated by reference herein. The Board of

1 Supervisors adopts as its own the Planning Department's determination under the California  
2 Environmental Quality Act and the General Plan findings and priority policy findings of  
3 Planning Code Section 101.1 as set forth in the Planning Department Letter in connection with  
4 the vacation of the Vacation Area and other actions in furtherance thereof.

5 (f) In Department of Public Works Order No. 177,575 dated May 26, 2008 (the  
6 "DPW Order"), the Department of Public Works found that: (a) the Vacation Area is no longer  
7 necessary for the City's present or prospective future right-of-way purposes and as a result of  
8 abandonment and non-use is no longer useful as a nonmotorized transportation facility as set  
9 forth in California Streets and Highways Code Section 892, and (b) there are no physical  
10 public utility facilities within the Vacation Area except for Pacific Gas & Electric ("PG&E") for  
11 electric transmission purposes and AT&T for telecommunication purposes. A copy of the  
12 DPW Order is on file with the Clerk of the Board of Supervisors in File No. and is  
13 incorporated by reference herein. The Board of Supervisors adopts as its own the  
14 recommendations of the Department of Public Works as set forth in the DPW Order  
15 concerning the vacation of the Vacation Area and other actions in furtherance thereof.

16 (g) In a letter dated December 18, 2007 (the "Real Estate Letter"), the City's  
17 Director of Property found that the proposed price reflects the appropriate value for the portion  
18 of the Vacation Area to be conveyed thereunder. This value represents uncertainty as to the  
19 scope of the City's actual rights over the subject pathways. In addition, because the pathways  
20 are not capable of independent development due to their size, location, access, and  
21 occupation, the Director has recommended, subject to Board approval, the direct conveyance  
22 to the adjacent property owners, as represented by non-profit organizations, as an alternate  
23 conveyancing procedure as identified in Administrative Code Section 23.3. The property  
24 owners adjacent to the Ingleside Path have formed non-profit organizations specifically and  
25 solely for the purpose of holding title to the subject portions of Ingleside Path and managing

1 the use of the respective portions of the Path. The proposed recipient organizations are the  
2 Urbano Pathway, Inc. for the portion of the Ingleside Path between Urbano and Head Streets  
3 and the Corona Pathway, Inc. for the portion of the Ingleside Path between Ocean Avenue  
4 and Corona Street. As stated in said Letter, the Director believes that the sales price and  
5 sales process are warranted and serve a proper public purpose; however, ratification of this  
6 decision is a policy matter for the Board. A copy of the Real Estate Letter is on file with the  
7 Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated by reference herein.

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

10 (i) From all the evidence submitted at the public hearing noticed in the Resolution  
11 of Intention and the materials on file with the Clerk of the Board of Supervisors in File No.  
12 \_\_\_\_\_, the Board of Supervisors finds that the Vacation Area, as described in such  
13 Resolution, is no longer necessary for the City's use as a public right-of-way, subject to the  
14 reservations and conditions described in this Ordinance.

15 (j) The public interest, convenience, and necessity require that the City reserve and  
16 except from the vacation of the Street Area solely a non-exclusive easement for the benefit of  
17 PG&E and AT&T in, upon, and over that certain portion of the Vacation Area in which PG&E's  
18 and AT&T's in-place and functioning facilities are currently located as shown on said Map  
19 Nos. 5005 and 6005, to the extent necessary to maintain, operate, repair and remove existing  
20 lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and  
21 fixtures for the operation of PG&E for power and gas transmission purposes and AT&T for  
22 telecommunications purposes, together with reasonable access to the foregoing facilities for  
23 the purposes set forth above. The public interest, convenience and necessity require that,  
24 except as specifically provided in this Ordinance above, no other easements or other rights be  
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1 reserved for any public utility facilities that are in place in such Vacation Area and that any  
2 rights based upon any such public utility facilities are extinguished.

3 (k) The public convenience and necessity further require that any reserved or  
4 excepted easements or licenses for existing utilities described in the preceding paragraph  
5 shall be terminated upon the earlier of (a) the termination of any applicable easement, license  
6 or similar agreement entered into with PG&E and AT&T pursuant to its terms, or (b) the  
7 determination by the Director of Public Works that (1) reasonable alternative utility service has  
8 been provided to the areas served by such utilities for the period of service needed or (2) the  
9 areas served by the utilities no longer require such service (as may be evidenced by written  
10 notice of the owners being served that such service is no longer required).

11 (l) The public interest and convenience require that the vacation be done as  
12 declared in the Resolution of Intention.

13 Section 2. Findings of Abandonment.

14 (a) An examination of the Ingleside Terrace subdivision map and San Francisco  
15 Ordinance No. 3547 reveal that the paths in the subdivision were not expressly dedicated to  
16 the City. A copy of said Ordinance is on file with the Clerk of the Board of Supervisors in File  
17 No. \_\_\_\_\_ and is incorporated herein by reference. However, the general public used the  
18 paths for many years, and, as such, the City acquired an implied common-law dedication  
19 through the public's use of the walkways.

20 (b) California case law indicates that an implied common-law dedication acquired by  
21 public use can be abandoned if there is evidence of a clear intent to abandon the subject  
22 property or nonuse. Here, the City manifest its intent to abandon the paths both expressly  
23 and implicitly. In a letter dated November 19, 1997, then-Chief of the Department of Public  
24 Work's Bureau of Street-Use and Mapping, Denise Brady, wrote to an Ingleside Terrace  
25 property owner stating that the walkways were private streets belonging to the homeowners'

1 association. A copy of said letter is on file with the Clerk of the Board of Supervisors in File  
2 No. and is incorporated herein by reference. Additionally, the City allowed the  
3 pathways to be fenced off from general public use, which eliminated public use of the  
4 pathways for at least 10 years. The City also took no action to prevent property owners from  
5 constructing various improvements over such pathways at significant cost to such owners.  
6 Because the City treated these paths as private and allowed fences that precluded all public  
7 access for many years, the paths have been abandoned through nonuse. Further, as a result  
8 of the City's written characterization of these paths as private and its acquiesce in allowing  
9 adjacent property owners to modify the paths for private use, the City expressly and implicitly  
10 abandoned them as public ways.

11 (c) The Board hereby declares that the subject paths have been abandoned for the  
12 reasons set forth above. Notwithstanding that the City has abandoned these paths as public  
13 ways, the City finds for purposes of constructive notice and in furtherance of its historic  
14 practice of following State law procedures to vacate and convey City rights in public ways that  
15 it will proceed with vacation of such ways in accordance with the California Streets and  
16 Highways Code Sections 8300 et seq.

17 Section 3. Except as set forth in Section 4 below, the Vacation Area is hereby ordered  
18 vacated in the manner described in the Resolution of Intention and pursuant to California  
19 Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

20 Section 4. The vacation of the Vacation Area is conditioned upon the reservation of a  
21 non-exclusive easement for the benefit of PG&E and AT&T on the terms and conditions  
22 described in Section 1 above.

23 Section 5. Any removal or relocation of a utility for which an easement has been  
24 reserved or excepted herein for the benefit of any party shall be performed at no cost or  
25 expense to the City, provided that nothing herein shall be deemed to preclude any future

1 owner of any portion of the Vacation Area from charging a third party for or otherwise causing  
2 a third party to bear the costs of such relocation where such charge or cost is otherwise  
3 permitted by law.

4 Section 6. The Board of Supervisors hereby approves the Director of Property's  
5 recommendation as set forth in the abovementioned Real Estate Letter and authorizes the  
6 Director of Property to execute the quit claim deeds for the Vacation Area substantially in the  
7 form contained in Clerk of the Board of Supervisors File No. \_\_\_\_\_ that convey the  
8 City's interest in the Vacation Area and all other documents and instruments necessary to  
9 effectuate the vacation and sale of the Vacation Area to the abutting property owners. Copies  
10 of said quit claim deeds are incorporated herein by reference.

11 Section 7. The Board of Supervisors hereby directs the Clerk of the Board of  
12 Supervisors to transmit to the Director of Public Works a certified copy of this Ordinance, and  
13 the Board of Supervisors hereby urges the Director of Public Works to proceed in the manner  
14 required by law.

15 Section 8. All actions heretofore taken by the officers of the City with respect to this  
16 Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board,  
17 Director of Property, and Director of Public Works are hereby authorized and directed to take  
18 any and all actions which they or the City Attorney may deem necessary or advisable in order  
19 to effectuate the purpose and intent of this Ordinance (including, without limitation, the filing of  
20 the Ordinance in the Official Records of the City and County of San Francisco and  
21 confirmation of satisfaction of any of the conditions to the effectiveness of the vacation and  
22 quit claim of the City's interest in the Vacation Area).

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

4 By: \_\_\_\_\_  
5 John D. Malamut  
6 Deputy City Attorney

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