

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.
 Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. Findings.

17 (a) On _____, 2007, the Board of Supervisors of the City and County of San
 18 Francisco (the "City") adopted Resolution No. _____ (the "Resolution of Intention"), a copy
 19 of which is on file with the Clerk of the Board of Supervisors in File No. _____ and is
 20 incorporated by reference herein, being a Resolution of declaring the Board's intent to order
 21 the vacation of the Ingleside Path right-of-way between Ocean Avenue and Corona Street and
 22 Urbano and Head Streets (the "Vacation Area"). The location and extent of the Vacation Area
 23 is shown in the Department of Public Works Map No. _____, dated _____, 2007, a copy
 24 of which is on file with the Clerk of the Board of Supervisors in File No. _____ and
 25 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 _____, 2007, beginning at
7 approximately 4:00 p.m., the Board 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 pursuant to the terms of sale agreements and quit
12 claim deeds substantially in the form attached hereto. Copies of said sale agreements and
13 quit claim deeds are on file with the Clerk of the Board of Supervisors in File No. _____, and
14 are hereby declared to be a part of this Ordinance by reference herein. This result is the
15 outcome of extensive and extended discussions and negotiations during the last 3 years
16 between Supervisor Elsbernd, the Department of Public Works, Department of Real Estate,
17 Ingleside Terrace Homeowners' Association, property owners adjacent to the Ingleside Path,
18 and other interested stakeholders.

19 (e) In a letter dated _____, 2007 (the "Planning Department Letter"), the City
20 Planning Department determined that (a) the vacation and other actions in furtherance
21 thereof, including, without limitation, the vacation of the Vacation Area and quit claim of the
22 City's interest therein, are, on balance, in conformity with the General Plan and Planning Code
23 Section 101.1 and (b) the actions contemplated in this Ordinance are in compliance with the
24 California Environmental Quality Act (California Public Resources Code Sections 21000 et
25 seq.). A copy of the Planning Department Letter is on file with the Clerk of the Board of

1 Supervisors in File No. _____ and is incorporated by reference herein. The Board of
2 Supervisors adopts as its own the Planning Department's determination under the California
3 Environmental Quality Act and the consistency findings as set forth in the Planning
4 Department Letter in connection with the vacation of the Vacation Area and other actions in
5 furtherance thereof.

6 (f) In a letter dated _____, 2007 (the "DPW Letter"), the Department of
7 Public Works found that: (a) the Vacation Area is no longer necessary for the City's present or
8 prospective future right-of-way purposes and as a result of abandonment and non-use is no
9 longer useful as a nonmotorized transportation facility as set forth in California Streets and
10 Highways Code Section 892, and (b) there are no physical public utility facilities within the
11 Vacation Area except for Pacific Gas & Electric ("PG&E") for electric transmission purposes.
12 A copy of the DPW Letter is on file with the Clerk of the Board of Supervisors in File No.
13 _____ and is 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 Letter
15 concerning the vacation of the Vacation Area and other actions in furtherance thereof.

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

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

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

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

16 (j) The public interest, convenience, and necessity require that the City reserve and
17 except from the vacation of the Street Area solely a non-exclusive easement for the benefit of
18 PG&E in, upon, and over that certain portion of the Vacation Area in which PG&E's in-place
19 and functioning facilities are currently located as shown on said Map No. , to the extent
20 necessary to maintain, operate, repair and remove existing lines of pipe, conduits, cables,
21 wires, poles, and other convenient structures, equipment and fixtures for the operation of
22 PG&E for power and gas transmission purposes, together with reasonable access to the
23 foregoing facilities for the purposes set forth above. The public interest, convenience and
24 necessity require that, except as specifically provided in this Ordinance above, no other
25 easements or other rights be reserved for any public utility facilities that are in place in such

1 Vacation Area and that any rights based upon any such public utility facilities are
2 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 pursuant to its terms, or (b) the determination by
7 the Director of Public Works that (1) reasonable alternative utility service has been provided to
8 the areas served by such utilities for the period of service needed or (2) the areas served by
9 the utilities no longer require such service (as may be evidenced by written notice of the
10 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 on the terms and conditions described in
22 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 conveyance documents and quit claim deeds substantially
7 in the form attached hereto that convey the City's interest in the Vacation Area and all other
8 documents and instruments necessary to effectuate the vacation and sale of the Vacation
9 Area to the abutting property owners.

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

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

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RECOMMENDED:
DEPARTMENT OF PUBLIC WORKS

By: _____
Fred V. Abadi, Phd.
Director of Public Works

RECOMMENDED:
DEPARTMENT OF PUBLIC WORKS

By: _____
City Engineer

RECOMMENDED:
DIRECTOR OF PROPERTY

By: _____
Amy Brown
Director of Property

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
John D. Malamut
Deputy City Attorney