

1 [Settlement of Lawsuit - George Birmingham - City to Receive \$1,500,000 for Sale of Parcels  
2 on the 400 Block of Burnett Avenue]

3 **Ordinance authorizing settlement of the lawsuit filed by George Birmingham against**  
4 **the City and County of San Francisco; approving the Agreement for Purchase and Sale**  
5 **of Real Estate; and authorizing official acts in connection with this Ordinance; the**  
6 **lawsuit was filed on September 9, 2015, in San Francisco Superior Court, Case No.**  
7 **CGC 15-547835; entitled George Birmingham v. City and County of San Francisco, et**  
8 **al.; the lawsuit involves plaintiff's attempts to gain street access for his parcel that is**  
9 **separated from Burnett Avenue by a paper street owned by Public Works and a vacant**  
10 **Public Utilities Commission parcel; the material terms of the settlement are the City will**  
11 **pursue the legislative approvals necessary to sell the parcels to plaintiff, and plaintiff**  
12 **will purchase the parcels from the City for \$1,500,000; approving the sale of the**  
13 **parcels; and affirming the Planning Department's determination under the California**  
14 **Environmental Quality Act.**

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

17 Section 1. The Planning Department has determined that the actions contemplated in  
18 this ordinance comply with the California Environmental Quality Act (California Public  
19 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
20 Board of Supervisors in File No. 171013 and is incorporated herein by reference. The Board  
21 affirms this determination.

22 Section 2. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby  
23 authorizes the City Attorney to settle the action entitled George Birmingham v. City and  
24 County of San Francisco, et al., San Francisco Superior Court, Case No. CGC 15-547835, by  
25 the material terms as set forth in the Settlement Agreement and Mutual Releases and Exhibits

1 (“Settlement Agreement”) contained in Board of Supervisors File No. 171004. Plaintiff’s  
2 lawsuit seeks an access route from his property to Burnett Avenue by traversing two City-  
3 owned parcels: a vacant paper street titled Burnett Avenue North located east of Burnett  
4 Avenue near paper street Copper Alley (“Public Works Property”) and a remnant of the  
5 Auxiliary Water Supply System owned by the Public Utilities Commission located on the 400  
6 block of Burnett Avenue, immediately west of the Public Works Property (Parcel 2719C/023;  
7 the “PUC Property”). The material terms of the Settlement Agreement include Public Works  
8 pursuing vacation of the Public Works Property and selling it to Plaintiff; the Public Utilities  
9 Commission selling the PUC Property (together with the Public Works Property, the  
10 “Settlement Property”) to Plaintiff; the City seeking a rezoning of the Settlement Property to  
11 Residential Mixed Use Low Density (RM-1); the City granting driveway easements across the  
12 Settlement Property before selling it to Plaintiff; Plaintiff paying to the City \$1,500,000, the full  
13 appraised value of the Settlement Property at the time the lawsuit was filed, for the Settlement  
14 Property; Plaintiff paying to City \$100,000 for the City’s administrative costs; and such other  
15 material terms as are set forth in the Settlement Agreement and the Agreement for Sale of  
16 Real Estate (the “Purchase Agreement”, attached as Exhibit C to the Settlement Agreement),  
17 contained in Board of Supervisors in File No. 171004.

18 Section 3. The above-named action was filed in San Francisco Superior Court on  
19 September 9, 2015, and the following parties were named in the lawsuit: City and County of  
20 San Francisco; San Francisco Department of Public Works; San Francisco Public Utilities  
21 Commission; and co-defendant the Burnett Terrace Condominiums Homeowners Association.

22 Section 4. The Public Utilities Commission approved the Settlement Agreement, as it  
23 relates to the PUC Property, by Resolution No. 17-0078 on April 11, 2017. A copy of that  
24 resolution is contained in Board of Supervisors File No. 171004.

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1           Section 5. The Public Utilities Commission approved the Purchase Agreement and a  
2 Reimbursement Agreement by Resolution No. 17-0088 on April 25, 2017, including a  
3 declaration that the PUC Property is surplus to the Public Utilities Commission's utility needs,  
4 and authorized a request to the Board of Supervisors and the Mayor to approve the sale,  
5 subject to the terms of the Purchase Agreement. A copy of that resolution is contained in  
6 Board of Supervisors File No. 171004. While the Settlement Property is surplus to the Public  
7 Utilities Commission's needs, the Board of Supervisors determines that it is not surplus to the  
8 City's needs under San Francisco Administrative Code Chapter 23A because it is needed to  
9 provide access to the adjoining property owner and to settle the lawsuit against the City. The  
10 Board of Supervisors further determines that the appraisal of the Settlement Property, valid as  
11 of the date of lawsuit initiation, satisfies the appraisal requirements of San Francisco  
12 Administrative Code Section 23.3. Of the \$1,500,000 sale price, \$1,200,000 is for the PUC  
13 Property and \$300,000 is for the Public Works Property.

14           Section 6. The Board of Supervisors approves the Settlement Agreement, including  
15 the Purchase Agreement and the Reimbursement Agreement, and authorizes the Director of  
16 Property and other applicable City officials to take all actions reasonably necessary to perform  
17 the City's obligations under the Settlement Agreement, and to transfer the Settlement  
18 Property to Plaintiff as contemplated by the Settlement Agreement and the Purchase  
19 Agreement.

20           Section 7. Pursuant to the Settlement Agreement, companion legislation proposes to:  
21 amend the zoning designation of the Settlement Property, contained in Board of Supervisors  
22 File No. 171013 and vacate the Public Works Property pursuant to the Purchase Agreement,  
23 contained in Board of Supervisors File No. 180517.

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APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA  
City Attorney

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ROBB W. KAPLA  
Deputy City Attorney

RECOMMENDED:

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MOHAMMED NURU  
Director of Public Works

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HARLAN L. KELLY, JR.  
General Manager,  
San Francisco Public Utilities Commission

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JOHN UPDIKE  
Director of Property

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