

1 [Mission Bay South - Park P3 Acceptance]

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3 **Ordinance dedicating Mission Bay South Park P3 (between 3rd and 4th Streets and**
 4 **Mission Creek) to public use; accepting an irrevocable offer for the acquisition facilities**
 5 **that comprise the park improvements; designating said facilities for public park and**
 6 **open space purposes only; accepting Park P3 for City maintenance and liability**
 7 **purposes, subject to specified limitations; adopting findings under the California**
 8 **Environmental Quality Act; making findings of consistency with the General Plan, the**
 9 **eight priority policies of Planning Code, Section 101.1, and the Mission Bay South**
 10 **Redevelopment Plan; adopting a Public Works Order that recommends acceptance of**
 11 **the Park P3 and related actions; and authorizing official acts, as defined, in connection**
 12 **with this Ordinance.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 16 **Board amendment additions** are in double-underlined Arial font.
 17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 18 **Asterisks (* * * *)** indicate the omission of unchanged Code
 19 subsections or parts of tables.

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

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20 Section 1. Definitions. All capitalized terms in this ordinance relating to Mission Bay
 21 have the definitions ascribed to them under the Mission Bay South Redevelopment Plan and
 22 Plan Documents described therein, which the City approved in 1998 in Ordinance No. 335-98,
 23 a copy of which is on file with the Clerk of the Board of Supervisors in File No. 981441.

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25 Section 2. Findings for Mission Bay Park P3.

1 (a) The Mission Bay Park P3 Infrastructure Improvements (the “Park P3
2 Improvements”) are located between 3rd and 4th Streets and Mission Creek and north of
3 Mission Bay South Block 1 (Assessor Parcel Block Number 8714, Lot 02) and include an
4 approximately 14-foot wide portion of the eastern side of the 4th Street public right-of-way (the
5 “4th Street Park Area” or “Area”). The Park P3 boundaries and the scope of the Park P3
6 Improvements are shown on a plat (the “Park P3 Plat”) on file with the Clerk of the Board of
7 Supervisors in File No. 230968 and incorporated herein by reference.

8 (b) The Successor Agency to the San Francisco Redevelopment Agency, the Office of
9 Community Infrastructure and Investment (“OCII”), in a letter dated October 27, 2022 (the
10 “Park P3 OCII Letter”), determined that the acceptance of the Park P3 Improvements is
11 consistent with the Mission Bay South Redevelopment Plan (the “Plan”) and Plan Documents.
12 The Park P3 OCII Letter also recommended that the Board of Supervisors accept the Park P3
13 Improvements. A copy of the Park P3 OCII Letter is on file with the Clerk of the Board of
14 Supervisors in File No. 230968 and is incorporated herein by reference.

15 (c) The Planning Department, in a letter dated July 27, 2023 (the “Park P3 Planning
16 Department Letter”), determined that the acceptance of the Park P3 Improvements is, on
17 balance, consistent with the General Plan and the eight priority policies of Planning Code
18 Section 101.1. The Planning Department also found that the contemplated actions do not
19 trigger the need for subsequent environmental review pursuant to the California
20 Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et
21 seq.). A copy of the Park P3 Planning Department Letter and environmental determination
22 are on file with the Clerk of the Board of Supervisors in File No. 230968 and are incorporated
23 herein by reference.

24 (d) In Public Works (“PW”) Order No. 208609 (the “PW Order”), dated September 11,
25 2023, the City Engineer certified and the PW Director determined that: (1) the Mission Bay

1 South Park P3 is currently a portion of property under split City and Port jurisdiction and
2 located on a portion of State Trust Parcel 2 and (2) FOCIL-MB, LLC (“FOCIL”) has irrevocably
3 offered the Park P3 Improvements to the City as set forth in the FOCIL Irrevocable Offer of
4 the Mission Bay Park P3 Improvements, dated October 25, 2022 (the “P3 FOCIL Offer”). In
5 addition, the PW Order states that PW inspected the facilities that were constructed pursuant
6 to Street Improvement Permit No. 19IE-00485, dated June 11, 2019; determined them to be
7 complete as of October 18, 2022; certified that they have been constructed in accordance with
8 the Plans and Specifications and all City codes, regulations, and standards, and the Mission
9 Bay South Redevelopment Plan and Plan Documents governing the Park P3 Improvements;
10 and determined that they are ready for their intended use. In the PW Order, the PW Director
11 also recommended to the Board of Supervisors that it accept the Park P3 Improvements as
12 acquisition facilities, dedicate them to public use, designate them for public park and open
13 space purposes only, and accept them for City maintenance and liability subject to the
14 requirements applicable to the Park’s outstanding punchlist items (the “Punchlist Items”) and
15 private fire hydrant facilities that are set forth in subsections 2(g) and (h) below. A copy of the
16 PW Order and P3 FOCIL Offer are on file with the Clerk of the Board of Supervisors in File
17 No. 230968 and are incorporated herein by reference.

18 (e) In addition, the PW Order recommends that the Board of Supervisors acknowledge
19 that although Public Works reviewed, permitted, inspected, and approved the Park under its
20 public right-of-way permitting jurisdiction, the Board should not accept it as public right-of-way
21 under California Streets and Highways Code Section 1806 and San Francisco Administrative
22 Code 1.52, and should instead dedicate and accept it solely as parkland under Public Works
23 jurisdiction in accordance with California Government Code Section 66477.1 and San
24 Francisco Subdivision Code Section 1438. This will allow for the efficient and orderly transfer
25 of jurisdictional responsibility over Park P3 from Public Works to other City departments

1 through subsequent action of the Board of Supervisors without going through the unnecessary
2 and time-consuming process of a street vacation procedure under California Streets and
3 Highways Code Sections 8300 et seq. and San Francisco Public Works Code Section 787(a)
4 that would be required if the improvements were designated as public right-of-way.

5 (f) The 4th Street Park Area will be the subject of a future Board of Supervisors action
6 to undertake a street vacation for this Area. The 4th Street Park Area is a part of 4th Street as
7 shown on the Final Map of Mission Bay that the Board of Supervisors approved in Motion No.
8 M99-69, which is on file with the Clerk of the Board of Supervisors in File No. 991159. In this
9 subsequent action, the Board of Supervisors also will consider transferring portions of the
10 Area interdepartmentally to the Recreation and Park Department and Port of San Francisco,
11 respectively and formally incorporating the Area into Park P3.

12 (g) The Punchlist Items include Storm Drain System Testing and Storm Drainage
13 correction for certain elements associated with the soon to be permitted Stormwater Pump
14 Station #3 on nearby property on Channel and 4th Streets. The details related to the
15 Punchlist Items are set forth in more detail in PW Order No. 208609.

16 (h) In the PW Order, the PW Director also recommends that the Board of Supervisors
17 specifically exclude from the acceptance a fire hydrant and its water service line (collectively,
18 the "Private Fire Hydrant") as shown on the Park P3 Plat. In addition, the PW Director
19 recommends that the Board's acceptance of Park P3 Improvements reserve the rights and
20 obligations of the adjacent property owner(s) compromising the One Mission Bay Owners
21 Association ("One Mission Bay"), located at Assessor Parcel Block No. 8715, Lot 6, to use
22 and maintain the Private Fire Hydrant pursuant to a future easement or similar document
23 acceptable to the Director of the Division of Property.

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1 Section 3. Adoption of Findings and Recommendations for Mission Bay South Park
2 P3.

3 (a) The Board of Supervisors adopts as its own the CEQA findings, the General Plan
4 consistency findings, and the eight priority findings of Planning Code Section 101.1 in the
5 Park P3 Planning Department Letter, all of which findings are referenced in Section 2 of this
6 ordinance, in connection with the acceptance of the Mission Bay Park P3.

7 (b) The Board of Supervisors adopts as its own the Mission Bay South Redevelopment
8 Plan consistency findings in the Park P3 OCII Letter, which findings are referenced in Section
9 2 of this ordinance, in connection with the acceptance of the Mission Bay Park P3.

10 (c) The Board of Supervisors adopts PW Order No. 208609, including the City
11 Engineer's certification and PW Director's recommendations concerning the acceptance of the
12 P3 FOCIL Offer, acceptance for city maintenance and liability of the Mission Bay Park P3,
13 subject to the requirements identified below in Section 4 of this ordinance, and other
14 requirements set forth in Sections 2(g) and (h) of this ordinance, and adopts said
15 recommendation and other actions as its own.

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17 Section 4. Acceptance of New Acquisition Facilities and Assumption of City
18 Maintenance and Liability Responsibilities.

19 (a) Pursuant to the Acquisition Agreement dated June 1, 2001 by and between the
20 San Francisco Redevelopment Agency and Catellus Development Corporation, and PW
21 Order No. 208609, the Board of Supervisors accepts the Park P3 FOCIL Offer and dedicates
22 the Park P3 Improvements for public use.

23 (b) As to Mission Bay Park P3, the Board of Supervisors approves the Park P3 Plat
24 and designates the property shown thereon and the 4th Street Park Area for park and open
25 space purposes only.

1 (c) In accordance with California Government Code Section 66477.1 and San
2 Francisco Subdivision Code Section 1438, the Board of Supervisors accepts Mission Bay
3 Park P3 for City maintenance and liability on behalf of the City, subject to the conditions listed
4 in Sections 3(d) and (e) of this ordinance and the requirements identified in Sections 2(g) –
5 (h), which include the Punchlist Items and the Private Fire Hydrant.

6 (d) The Board’s acceptance of the Park P3 Improvements, which include the 4th Street
7 Park Area, is for the Mission Bay Park P3 only, excluding any encroachments that are
8 permitted, not permitted, or both, subject to OCII’s maintenance responsibility for the term of
9 the Mission Bay South Redevelopment Plan Ground Lease Agreement, and subject to
10 maintenance responsibility of the Port of San Francisco for the portions of Park P3 within Port
11 jurisdiction. Specifically excluded from the acceptance is the Private Fire Hydrant as shown
12 on the Park P3 Plat. Reserved from this acceptance action are the rights and obligations of
13 One Mission Bay to use and maintain the Private Fire Hydrant. Such rights shall be the
14 subject of a future easement or similar document acceptable to the City’s Director of Property.
15 A copy of the draft Private Fire Hydrant easement is on file with the Clerk of the Board of
16 Supervisors in File No. 230968 and incorporated herein by reference.

17 (e) The Board of Supervisors hereby acknowledges FOCIL’s conditional assignment of
18 all warranties and guaranties to OCII related to the construction of the above listed Park P3
19 Improvements and the obligation of OCII to maintain the Park Improvements until termination
20 of the Mission Bay South Redevelopment Plan Ground Lease Agreement.

21 (f) The Board of Supervisors directs the Real Estate Division to show Park P3 under
22 the jurisdiction of Public Works above the mean high tide line and the Port of San Francisco
23 below this line in accordance with this ordinance.

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1 Section 5. Delegation of Punchlist Items Acceptance to Public Works and Easement
2 Approval for the Private Fire Hydrant to Division of Real Estate.

3 (a) The Board of Supervisors hereby delegates to the PW Director the authority to
4 accept the Park P3 Punchlist Items identified in this ordinance for public use, park and open
5 space purposes, and City maintenance and liability, and to take other associated official
6 actions in regard to these Punchlist Items.

7 (b) The Board of Supervisors hereby delegates to the Director of Property the authority
8 to enter into and approve an easement agreement or similar document with One Mission Bay
9 on substantially the same terms as the draft on file with the Board concerning the rights and
10 obligations of the property owner to use and maintain the Private Fire Hydrant. The Director
11 of Property is authorized to modify or amend the terms of the easement agreement on file with
12 the Board that the Director of Property, in consultation with the City's Risk Manager and the
13 City Attorney, deems necessary or advisable and in the City's best interests, including without
14 limitation, modification of insurance requirements, hazardous material provisions, and
15 indemnity. Should the Director fail to reach an acceptable agreement, the Board authorizes
16 the City agency with jurisdiction over Park P3 to terminate any implied or reserved rights for
17 the Private Fire Hydrant, remove such facilities, and restore Park P3 to a condition acceptable
18 to the City agency with jurisdiction over Park P3.

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20 Section 6. Authorization for Implementation. The Mayor, Clerk of the Board of
21 Supervisors, Director of Property, and PW Director are hereby authorized and directed to take
22 any and all actions which they or the City Attorney may deem necessary or advisable to
23 effectuate the purpose and intent of this ordinance, including, but not limited to, the filing of
24 the Park P3 Plat in the Official Records of the City and County of San Francisco and
25 recordation of the Private Fire Hydrant easement.

1 Section 7. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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6 APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

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9 By: /s/ John D. Malamut
10 JOHN D. MALAMUT
11 Deputy City Attorney

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