

1 [Easement Agreement - Avalon Ocean Avenue, L.P. - 1150 Ocean Avenue]

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3 **Resolution approving an Easement Agreement between the City and County of San**  
4 **Francisco and Avalon Ocean Avenue, L.P., for acquisition of an easement on, over, and**  
5 **under the property at 1150 Ocean Avenue so that the San Francisco Municipal**  
6 **Transportation Agency (SFMTA) can operate and maintain the traffic signal at the**  
7 **intersection of Ocean Avenue and Brighton Avenue; authorizing the SFMTA to take**  
8 **certain actions in furtherance of this Resolution, as defined herein; and making**  
9 **findings under the California Environmental Quality Act.**

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11 WHEREAS, On May 21, 2009, the Planning Commission (Commission) approved  
12 Motion No. 17885, granting conditional use authorization to AvalonBay Communities, Inc.  
13 (Avalon) to build up to 173 new dwelling units and to provide approximately 29,500 square  
14 feet of ground-floor commercial spaces at 1150 Ocean Avenue, which is on the north side of  
15 the intersection of Ocean Avenue opposite Brighton Avenue (Project); and adopted findings  
16 under the California Environmental Quality Act (CEQA) related to the Project; and

17 WHEREAS, To facilitate vehicular and pedestrian access to the Project, Avalon was  
18 required to, among other things, extend Brighton Avenue through the Project site and create  
19 new public sidewalks adjoining the new residential buildings; and

20 WHEREAS, As a condition of the development, the Planning Department required that  
21 the Project upgrade the traffic signal at the intersection to control the driveway access to the  
22 development; and

23 WHEREAS, In accordance with CEQA, the Project's environmental impacts were  
24 analyzed in the Balboa Park Station Area Plan Environmental Impact Report (Area Plan EIR),

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1 which found that the Project would, among other impacts, detrimentally affect the traffic flow  
2 westbound on Ocean Avenue; and

3 WHEREAS, To mitigate that impact, the Area Plan EIR proposed a mitigation measure  
4 to adjust the intersection signal timing to provide a short protected left-turn green phase for  
5 westbound traffic at the Ocean Avenue/Brighton Avenue intersection (Mitigation Measure); the  
6 Mitigation Measure required the project sponsor to confirm with the San Francisco Municipal  
7 Transportation Agency (SFMTA) as to the feasibility of implementation of the Mitigation  
8 Measure; and

9 WHEREAS, As required by CEQA, the Commission made a separate and independent  
10 determination of the Project's specific and cumulative impacts based on the analysis and  
11 conclusions of the Area Plan EIR; the Commission concluded that the Mitigation Measure  
12 should be included in the Project's Mitigation Monitoring and Reporting Program (MMRP),  
13 adopted as part of Motion No. 17885, although SFMTA had not yet reviewed and analyzed  
14 the feasibility of the Mitigation Measure; and

15 WHEREAS, The Commission determinations are on file with the Clerk of the Board of  
16 Supervisors in File No. 161183 and are incorporated herein by reference; and

17 WHEREAS, After adoption of the relevant approvals and issuance of entitlements,  
18 agreements and authorizations to construct the Project components, Avalon became aware  
19 that the Project MMRP erroneously identified the direction of traffic subject to the signal timing  
20 change as "eastbound" rather than "westbound" as described in the Mitigation Measure; and

21 WHEREAS, After the Project was under construction and negotiations between  
22 SFMTA and Avalon were underway in regard to the design of the new signal at Brighton and  
23 Ocean Avenues, SFMTA staff reviewed and analyzed the feasibility of the Mitigation Measure;  
24 and

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1           WHEREAS, After the analysis, which included obtaining traffic counts, SFMTA staff  
2 determined that implementing the Mitigation Measure would cause unacceptable delays to the  
3 Muni Metro K Line, which operates in both an eastbound and westbound direction on Ocean  
4 Avenue, and to vehicle traffic, and that in any event, the extent of the impacts projected in the  
5 Korve Study and the Area Plan EIR had not materialized and were not significant; and

6           WHEREAS, On November 20, 2012, the City Traffic Engineer wrote to the Planning  
7 Department, detailing the reasons why the SFMTA had determined that the Mitigation  
8 Measure was infeasible and concluding that no feasible alternative signal or other  
9 improvements could be approved by the SFMTA; a copy of the letter is on file with the Clerk of  
10 the Board of Supervisors in File No. 161183; and

11           WHEREAS, On November 3, 2015, under Resolution No. 15-148, the SFMTA Board of  
12 Directors adopted the CEQA findings made by the Commission in Motion No. 17885 except  
13 for the Mitigation Measure; after reviewing the November 20, 2012, letter to the Planning  
14 Department, the SFMTA Board found that the Mitigation Measure will result in unacceptable  
15 traffic and transit delays and potential traffic safety hazards; and

16           WHEREAS, The SFMTA Board also found, in accordance with CEQA Guidelines  
17 Section 15162, that no supplemental review of the Project is required because (1) there are  
18 no modifications to the Project proposed as a result of the Easement Agreement; (2) adoption  
19 of the Easement Agreement does not result in substantial changes with respect to the  
20 circumstances under which the Project would be implemented, requiring major revisions to the  
21 Area Plan EIR due to the involvement of new significant environmental effects, or a  
22 substantial increase in the severity of effects identified in the Area Plan EIR; and (3) no new  
23 information of substantial importance to the Project has become available, which was not  
24 known and could not have been known with the exercise of reasonable diligence at the time  
25 the previous EIR was certified, that would indicate (a) the Project will have significant effects

1 not discussed in the Area Plan EIR or (b) significant environmental effects will be substantially  
2 more severe; and

3 WHEREAS, During construction of the Project, Avalon's contractor installed signal  
4 hardware into the driveway that detects when traffic approaches the intersection; and

5 WHEREAS, The SFMTA and Avalon have negotiated an Easement Agreement so that  
6 the City may acquire an easement on, over and under the property at 1150 Ocean Avenue so  
7 that the SFMTA can access the driveway in order to operate and maintain the detection  
8 hardware and associated striping for the life of the signal system; a copy of the Easement  
9 Agreement is on file with the Clerk of the Board of Supervisors in File No. 161183 and  
10 incorporated herein by reference; and

11 WHEREAS, In General Plan Referral Case Number 2016-003757GPR, the Planning  
12 Department found that the project easement is consistent with the eight priorities of the  
13 Planning Code and is, on balance, in conformity with the Objectives and Policies of the  
14 General Plan; and

15 WHEREAS, Under Resolution No. 15-148, the SFMTA Board also approved the  
16 Easement Agreement between the City and Avalon Ocean Ave. LP and urged the Board of  
17 Supervisors to approve the Easement Agreement; now, therefore, be it

18 RESOLVED, After reviewing and considering the determinations of the Commission  
19 and the SFMTA Board, the Board of Supervisors adopts the CEQA findings and finds that, in  
20 accordance with CEQA Guidelines Section 15162, no supplemental review of the Project is  
21 required because (1) there are no modifications to the Project proposed as a result of the  
22 Easement Agreement; (2) adoption of the Easement Agreement does not result in substantial  
23 changes with respect to the circumstances under which the Project would be implemented,  
24 requiring major revisions to the Area Plan EIR due to the involvement of new significant  
25 environmental effects, or a substantial increase in the severity of effects identified in the Area

1 Plan EIR; and (3) no new information of substantial importance to the Project has become  
2 available, which was not known and could not have been known with the exercise of  
3 reasonable diligence at the time the previous EIR was certified, that would indicate (a) the  
4 Project will have significant effects not discussed in the Area Plan EIR or (b) significant  
5 environmental effects will be substantially more severe; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors approves the Easement  
7 Agreement between the City and Avalon Ocean Ave. LP in substantially the form on file with  
8 the Clerk of the Board of Supervisors in File No. 161183, and authorizes the SFMTA to take  
9 all steps necessary to deliver the Agreement for recording and to execute all certificates,  
10 agreements, notices, consents, escrow instructions, closing documents and other instruments  
11 or documents as the SFMTA deems necessary or appropriate to effectuate the purpose and  
12 intent of this Resolution; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of the Easement Agreement being  
14 fully executed by all parties, the SFMTA shall provide the final agreement to the Clerk of the  
15 Board for inclusion into the official file.

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