

1 [Resolution of Intent - Street and Public Easement Vacation - Parkmerced Development
2 Project]

3 **Resolution declaring the intent of the Board of Supervisors to order the conditional**
4 **vacation of portions of streets (along with public service easements within those**
5 **streets) that exist within the Subphases 1A and 1B of the Parkmerced Development**
6 **Project area, an approximately 152 acre site located in the Lake Merced District in the**
7 **southwest corner of San Francisco and generally bounded by Vidal Drive, Font**
8 **Boulevard, Pinto Avenue, and Serrano Drive to the north, 19th Avenue and Junipero**
9 **Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced**
10 **Boulevard to the west; reserve various easement rights in favor of the City and third**
11 **party utilities, subject to conditions specified; delegate authority to the Director of Real**
12 **Estate to execute certain quit claim deeds; adopt findings under the California**
13 **Environmental Quality Act; adopt findings that the vacations are consistent with the**
14 **Parkmerced Development Agreement, the General Plan, and the eight priority policies**
15 **of Planning Code, Section 101.1; direct the Clerk of the Board of Supervisors to make**
16 **certain transmittals; authorize actions by City officials in furtherance of the street**
17 **vacation ordinance; and setting a hearing date for all persons interested in the**
18 **proposed vacation of said street areas and public service easements.**

19
20 WHEREAS, On February 20, 2015, Parkmerced Owner, LLC (together, with its
21 successors and assigns, the "Project Sponsor") submitted three applications for tentative
22 subdivision maps pursuant to the requirements of the California Subdivision Map Act for
23 Subphases 1A and 1B of the Project. On August 21, 2015, Public Works ("PW") pursuant to
24 PW Order No. 183946 conditionally approved such tentative maps: (1) Tentative Map No.
25 8530 requested approval to subdivide Assessor's Blocks 7326, 7330, 7331, 7364, 7365, 7366

1 and 7370 (Parkmerced Planning Blocks 20, 21S, and 22); (2) Tentative Map No. 8531
2 requested approval to subdivide Assessor's Block 7335 (Parkmerced Planning Block 6); and
3 (3) Tentative Map No. 8532 requested approval to subdivide Assessor's Block 7308
4 (Parkmerced Planning Block 1) (collectively, the "Subphase 1A and 1B Tentative Maps"); and

5 WHEREAS, The Project Sponsor is currently processing with PW the approval of a
6 final subdivision map for each of the Subphase 1A and 1B Tentative Maps (each, a "Final
7 Map"); and

8 WHEREAS, This vacation proceeding is for: 1) portions of the following streets within
9 Parkmerced along with public service easements in the vacated streets: Vidal Drive, Galindo
10 Avenue, Chumasero Drive, Acevedo Avenue, Serrano Drive, Gonzalez Drive, Cambon Drive,
11 and Font Boulevard (the "Street Vacation Area"). These street and public easement vacation
12 actions are conducted under the general vacation procedures of the Public Streets, Highways
13 and Service Easements Vacation Law (California Streets and Highways Code sections 8300
14 et seq.) and Public Works Code section 787(a); and

15 WHEREAS, Section 787(a) of the San Francisco Public Works Code provides that the
16 street vacation procedures for the City and County of San Francisco (the "City") shall be in
17 accordance with the applicable provisions of the California Streets and Highways Code and
18 such rules and conditions as are adopted by the Board of Supervisors; and

19 WHEREAS, The location and extent of the Street Vacation Area is shown in PW SUR
20 Map No. 2015-006, sheets 1 through 10. Copies of such maps are on file with the Clerk of the
21 Board in File No. 190870 and are incorporated herein by reference; and

22 WHEREAS, The proposed vacation of the Vacation Area is part of an action to
23 implement the Parkmerced Development Agreement, approved by this Board of Supervisors
24 by Ordinance No. 89-11 (the "Development Agreement") and fulfill the objectives of the
25 Parkmerced Special Use District (Planning Code Section 249.64); and

1 WHEREAS, The proposed vacations and other actions contemplated herein implement
2 the Project vested by the Project Approvals, including the construction of buildings and streets
3 consistent with the Parkmerced Design Standards and Guidelines, the Parkmerced
4 Transportation Plan, and the Parkmerced Infrastructure Report, all of which are incorporated
5 by reference into the Development Agreement; and

6 WHEREAS, The City proposes to quitclaim its interest in the Street Vacation Area;
7 however, because many of these streets and easements will remain in use until specified
8 times, certain portions of the Street Vacation Area as described more fully below would not be
9 vacated until certain conditions are satisfied; and

10 WHEREAS, No portion of the Street Vacation Area shall be vacated until certain
11 conditions are satisfied, as follows:

12 (a) The Project Sponsor shall provide an irrevocable offer of dedication to the City in
13 form substantially similar to that provided in Exhibit L of the Development Agreement for all
14 lands needed for construction of proposed improvements shown on the Street Improvement
15 Permit for Subphases 1A and 1B of the Project. Subdivider shall make such irrevocable offers
16 of dedication prior to City approval of the Final Subdivision Maps or issuance of a Street
17 Improvement Permit for Subphases 1A or 1B of the Project, whichever is earlier. The offer of
18 dedication shall be subject to the reservation of an easement in favor of Project Sponsor for
19 all domestic water utilities within the dedicated area, which easement shall be extinguished
20 upon completion of all Development Phases of the Project and formal acceptance of the
21 domestic water utilities by the City pursuant to the Development Agreement. The sum total of
22 the square footage of the land proposed for dedication to the City shall be equal to or exceed
23 the square footage of the Street Vacation Area; and

24 (b) The Project Sponsor shall provide PW with an acceptable Public Improvement
25 Agreement (“PIA”) pursuant to Section 1351 of the San Francisco Subdivision Code and the

1 Subdivision Map Act for all improvements within the Final Map or required for development of
2 the area shown in the Final Map prior to approval of a Final Map or issuance of a Street
3 Improvement Permit for Subphases 1A or 1B of the Project, whichever is earlier. Such PIA
4 shall address security provisions and provide interim easements or licenses via separate
5 offer, such that the City can complete the improvements if the Subdivider fails to do so; and

6 WHEREAS, In a letter dated August 3, 2015 (the "Planning Letter"), the Planning
7 Department determined that the proposed vacations and other actions contemplated herein
8 are on balance consistent with the General Plan and with the eight priority policies of Planning
9 Code Section 101.1, comply with applicable provisions of the Planning Code, and are
10 consistent with the Project as defined in the Development Agreement and the Project
11 Approvals; and

12 WHEREAS, A copy of said letter is on file with the Clerk of the Board in File
13 No. 160870 and is incorporated by reference herein; and

14 WHEREAS, In a letter dated July 5, 2016 (the "DRE Letter"), the Director of the
15 Department of Real Estate determined that: the Development Agreement contemplates the
16 vacation of the Street Vacation Area; Exhibit J of the Development Agreement shows the
17 general locations of the property vacations and dedications required by the Project; Section
18 6.1.2 of the Development Agreement requires that (a) all real property exchanged under the
19 Development Agreement be valued on a square foot basis and shall be deemed equal in
20 value per square foot, (b) if any real property exchange under the Development Agreement
21 results in a net loss of acreage for the City, then the Project Sponsor must pay to the City the
22 fair market value of the real property loss at the time of transfer based on the then-current use
23 of the property so transferred, and (c) the City shall not be required to pay for any net gain in
24 real property; provided, however, such gain can be applied against future real property
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1 transfers for purposes of determining whether there has been a net loss as described above;
2 and

3 WHEREAS, The Director of Real Estate also determined in the DRE Letter that: the
4 proposed vacations and dedications associated with Subdivision Maps 8350, 8351, and 8352
5 result in a net gain in real property owned by the City; therefore, no payment is owed by the
6 Project for the vacation of the Street Vacation Area; and this net gain should be credited
7 against future public right of way vacations for the Project; and

8 WHEREAS, A copy of said letter is on file with the Clerk of the Board in File
9 No. 160870; and

10 WHEREAS, The Director of PW has prepared PW Order No. 185138, dated
11 July 22, 2016, a copy of which is on file with the Clerk of the Board of Supervisors in File
12 No. 160870 and incorporated herein by reference, and has determined that: (a) upon
13 satisfaction of the applicable condition or conditions, the respective Street Vacation Area will
14 no longer be necessary for the City's present or prospective future public street, sidewalk, and
15 public service easement purposes as all existing physical public or private utilities located in
16 the Street Vacation Area will be relocated to the satisfaction of the City as part of the
17 construction of the Project; (b) with certain exceptions noted, the public interest, convenience,
18 and necessity do not require any easements or other rights be reserved for any public or
19 private utility facilities that are in place in the Street Vacation Area and that any rights based
20 upon any such public or private utility facilities shall be extinguished automatically upon the
21 effectiveness of the vacation; (c) in accordance with California Streets and Highways Code
22 Section 892, for those portions of the Street Vacation Area to be conditionally vacated, upon
23 satisfaction of the applicable condition or conditions, the right-of-ways and parts thereof
24 proposed within the respective Street Vacation Areas will no longer be useful as a
25 nonmotorized transportation facility, as defined in Section 887, because the Development

1 Agreement requires the dedication and construction of an extensive street, bicycle path,
2 pedestrian path, park, and trail system that is more extensive than the areas being vacated
3 hereby and that is designed to integrate with existing built streets in the adjacent
4 neighborhoods; (d) the value of such exchange for future public right-of-way and other public
5 benefits is equal or in favor of the City, and (e) although the consent of all property owners
6 adjacent to the Vacation Areas was not obtained, the applicant made reasonable attempts to
7 notify and obtain consent from all property owners adjacent to a Vacation Area and the
8 proposed street vacations do not deprive any private landowner of access to the built public
9 street grid; and

10 WHEREAS, In the PW Order the PW Director determined that the public interest,
11 convenience, and necessity require that the City reserve from the vacation of the Street
12 Vacation Area non-exclusive easements for the benefit of the City (and subject to possible
13 grants by the City of temporary, immediately revocable licenses by the City in favor of AT&T,
14 PG&E, and any other utilities) for any utilities, telecommunications facilities, or power and gas
15 transmission facilities, respectively, located in, upon, or over any portion of the Street
16 Vacation Area in which their respective in-place and functioning utilities are located, to the
17 extent necessary to maintain, operate, repair, and remove existing lines of pipe, conduits,
18 cables, wires, poles, and other convenient structures, equipment and fixtures for the operation
19 by City of City utilities, by AT&T of telecommunications facilities, by PG&E of power and gas
20 transmission facilities, or for other public utilities; and

21 WHEREAS, This reservation, and any subsequent grant of easements or licenses
22 would be subject to the City's authority to require AT&T, PG&E, and any other utilities to
23 remove or relocate their facilities at no expense to the City when necessary to accommodate
24 a project done under the governmental authority of the City; and

25

1 WHEREAS, To the extent the non-exclusive easements described in this section have
2 not previously merged into a fee interest held by the City, such non-exclusive easements
3 reserved would be automatically extinguished when such alternative replacement facilities are
4 completed to the satisfaction of the City Engineer and the Board of Supervisors accepts the
5 facilities; and

6 WHEREAS, The City would execute a quitclaim of any interest in any easement
7 reserved and would cause such quitclaim to be recorded against the subject property upon
8 the fee title owner demonstrating to the City that replacement utilities serving the affected area
9 have been substantially completed and operable; and

10 WHEREAS, In the event a non-exclusive easement described in this section has
11 merged into the fee interest held by the City, such interest would be deemed to be
12 automatically extinguished and conveyed at the time the fee interest is conveyed by the City
13 to Project Sponsor or any other transferee pursuant to the Development Agreement; and

14 WHEREAS, In the PW Order the PW Director determined that the public interest,
15 convenience, and necessity require that the City reserve from the vacation of the Street
16 Vacation Area temporary access for the benefit of the public over any portion of the Street
17 Vacation Area where required to preserve access between a private property and the existing
18 street grid ; and

19 WHEREAS, The access proposed for reservation in this paragraph would be
20 automatically extinguished when replacement access serving the affected area has been
21 substantially completed and is open to the public; and

22 WHEREAS, Except in the case where the reserved access rights have merged into a
23 fee interest held by the City (in which case they shall be deemed to be automatically
24 extinguished), the City would execute a quitclaim of the temporary access reserved under this
25 paragraph and shall cause such quitclaim to be recorded against the subject property upon

1 the servient tenement owner demonstrating to the City that replacement access serving the
2 affected area has been substantially completed and is open to the public; and

3 WHEREAS, Subject to the reservations and conditions specified in this Resolution,
4 those portions of the Vacation Area proposed to be conditionally vacated will be unnecessary
5 for prospective public use once the applicable condition has been satisfied; and

6 WHEREAS, Except as specifically provided above, the public interest, convenience,
7 and necessity require that no other easements or other rights be reserved for any public or
8 private utility facilities that are in place in the proposed Vacation Area and that any rights
9 based upon any such public or private utility facilities be extinguished upon Board approval of
10 the vacation actions; now, therefore, be it

11 RESOLVED, That pursuant to California Streets and Highways Code Sections 8300 et
12 seq. and San Francisco Public Works Code Section 787(a), the Board of Supervisors hereby
13 declares that it intends to order the vacation of the Street Vacation Area, as shown on SUR
14 Map No. 2015-006, sheets 1 through 10, which is incorporated hereby by reference, subject to
15 the conditions, where applicable, and to the reservations described above; and, be it

16 FURTHER RESOLVED, That notice is hereby given that on the _____ day of
17 _____, 2016, beginning at approximately _____ in the Legislative
18 Chambers of the Board of Supervisors, all persons interested in or objecting to the proposed
19 vacation will be heard; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors acknowledges the PW Order
21 No. 185138 findings, including among other things, that (a) for those portions of the Vacation
22 Area to be conditionally vacated, upon satisfaction of the applicable condition or conditions,
23 the respective Vacation Area will no longer be necessary for the City’s present or prospective
24 future public street and sidewalk and public service easement purposes; (b) for those portions
25 of the Vacation Area to be conditionally vacated, upon satisfaction of the applicable condition

1 or conditions, the right-of-ways and parts thereof proposed for vacation will no longer be
2 useful as a nonmotorized transportation facility, as defined in Section 887, because the
3 Parkmerced Project includes new facilities for bicycle and pedestrian movement that are
4 equal to or in excess of what may currently exist; and (c) the value of such exchange for
5 future public right-of-way and other public benefits is equal or in favor of the City; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors directs the Clerk of the Board
7 to transmit to the Department of Public Works a certified copy of this Resolution, and the
8 Board of Supervisors urges the Director of Public Works and the Clerk of the Board to publish
9 and post this Resolution and to give notice of the hearing of such contemplated action in the
10 manner required by law.

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