

1 [Summary Vacation of a Retaining Wall, Sewer and Utility Easement Within Assessor's Block
2 2763, Lot 023]

3
4 **Ordinance ordering the summary vacation of a retaining wall, sewer and utility**
5 **easement located within Assessor's Block 2763, Lot 023, on land commonly known as**
6 **3750 Market Street, subject to specified conditions; adopting findings pursuant to the**
7 **California Streets and Highways Code Sections 8330 et seq.; adopting findings**
8 **pursuant to the California Environmental Quality Act; adopting findings that the**
9 **vacation and sale are consistent with the City's General Plan and Eight Priority Policies**
10 **of City Planning Code Section 101.1; authorizing the conveyance of the vacated**
11 **easement area to the fee owner of Assessor's Block 2763, Lot 023; and ratifying and**
12 **authorizing actions in furtherance of the ordinance.**

13
14 Note: This entire section is new.

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

16 Section 1. Findings. The Board of Supervisors of the City and County of
17 San Francisco finds, determines and declares as follows:

18 A. John P. Sullivan and Jung Sook Sullivan, as husband and wife
19 (collectively, "Owner") is the owner in fee title of Lot 023 in Assessor's Block 2763 in
20 the City and County of San Francisco (the "Owner's Property"). Owner proposes to
21 construct a three-story over garage, two-unit building on the lot that makes up the
22 Owner's Property.

23 B. The Owner's Property is encumbered by a public retaining wall, sewer
24 and utility easement, granted to the City by Deed dated February 15, 1957 and
25 recorded on June 24, 1957 in Book 7096, Page 476 of the Official Records of the City

1 and County of San Francisco (the "Easement Area"). The Easement Area consists of
2 approximately 1,150 square feet of land.

3 C. The Director of Planning, by letter dated July 12, 2001, found that the
4 Easement Area was established for street widening purposes.

5 D. The Department of Public Works has advised the Real Estate Division of
6 the following: (i) there are no in-place public utility facilities that are in use on the
7 Easement Area that would be effected by the vacation of the Easement Area, (ii) the
8 Easement Area has never been used for sewer or utility purposes, and (iii) although a
9 retaining wall exists in the Easement Area, an easement for this purpose in favor of the
10 City is no longer necessary for present or prospective use because Owner will
11 construct a replacement wall that will be privately maintained. This new retaining wall
12 to be maintained by Owner, and the cost and legal and maintenance responsibility shall
13 be borne by Owner rather than the City.

14 E. The Easement Area is shown in Department of Public Works' SUR Map
15 No. SUR-5001, dated April 1, 2003, and more particularly described in the legal
16 description attached to such map. A copy of such map and accompanying legal
17 description are on file with the Clerk of the Board of Supervisors in File No.

18 _____.

19 F. Section 8334 of the California Streets and Highways Code provides that
20 the legislative body of a local agency may summarily vacate an excess right-of-way of
21 a street, highway or public easement under certain circumstances. In particular,
22 Section 8333 provides that the legislative body of a local agency may summarily vacate
23 a public easement that has not been used for the purpose for which it was dedicated or
24 acquired for the five years immediately preceding the proposed vacation or when an
25 easement has been superseded. In addition, Section 8334.5 of the California Streets

1 and Highways Code allows for a summary vacation only if there are no in-place utility
2 facilities that are in use and would be affected by the vacation.

3 G. The Board of Supervisors finds that the Easement Area has not been
4 used for the sewer and utility purposes for which it was dedicated or acquired for the
5 five years immediately preceding the proposed vacation.

6 H. The Board of Supervisors finds that there are no in-place utility facilities
7 that are in use and would be affected by the vacation of the Easement Area, and the
8 existing public retaining wall will be replaced by a privately owned and maintained
9 retaining wall.

10 I. The vacation of the Easement Area is necessary in connection with the
11 development of Owner's proposed construction project on Assessor's Block 2763,
12 Lot 023. The City proposes to sell and convey the Easement Area to Owner
13 concurrently with the satisfaction of the conditions to the effectiveness of the vacation
14 contemplated hereby (and subject to certain other conditions set forth or to be set forth
15 in an Agreement for the Sale of Real Estate between the City and Owner a copy of
16 which is on file with the Clerk of the Board of Supervisors under File No. _____
17 (the "Sale Agreement")).

18 J. The Director of Planning, by letter dated July 12, 2001, found that the
19 vacation of the Easement Area and conveyance are categorically exempt from
20 environmental review and are in conformance with the City's General Plan subject to
21 satisfaction of the following provisions: (i) upon approval of the new retaining
22 wall/building foundation by the Department of Building Inspection, (ii) accommodation
23 of the sewer infrastructure to the satisfaction of the Bureau of Engineering's Hydrology
24 Section, and (iii) building design subject to review by the Planning Department. The
25 Director of Planning, by the same letter stated that a copy of the variance approval

1 letter attached to the Director of Planning's letter included findings of consistency with
2 the General Plan and the priority planning policies of Section 101.1 of the Planning
3 Code for the overall building, which letter is on file with the Clerk of the Board of
4 Supervisors under File No. _____.

5 K. The San Francisco Public Utilities Commission approved the summary
6 vacation of the Easement Area and subsequent sale to Owner by Resolution No. 03-
7 0227. Said resolution is on file with the Clerk of the Board of Supervisors under File
8 No. _____ and is incorporated herein by this reference.

9 Section 2. The public convenience and necessity require that no easements or other
10 rights be reserved for any public utility facilities and that any rights based upon any such
11 public utility facilities shall be extinguished automatically upon the effectiveness of the
12 vacation hereunder.

13 Section 3. The public interest and convenience require that the vacation be done as
14 declared in this Ordinance.

15 Section 4. The Board of Supervisors hereby finds that the vacation of the Easement
16 Area is in conformity with the General Plan and is consistent with the Eight Priority Policies of
17 Planning Code Section 101.1 for the same reasons as set forth in the letter of the Director of
18 Planning dated July 12, 2001, and hereby incorporates such findings by reference as though
19 fully set forth in this Ordinance.

20 Section 5. Pursuant to California Streets and Highways Code Sections 8330 et seq.
21 (Public Streets, Highways, and Service Easement Vacation Law, Summary Vacation) and
22 Section 787 of the San Francisco Public Works Code, the Easement Area is hereby ordered
23 summarily vacated in the manner described in this Ordinance, subject to and effective upon
24 the satisfaction of the following condition: the City shall have determined that all of the
25 conditions precedent to the City's conveyance of the Easement Area to the Owner under the

1 Sale Agreement (other than the effectiveness of the vacation hereunder) have been satisfied
2 or waived by the City pursuant thereto; and upon the satisfaction of such condition (as
3 conclusively evidenced by a letter from the Director of Property, or his designee, that such
4 condition has been satisfied, including the satisfaction of such condition through a
5 simultaneous escrow with the closing of the sale of the Easement Area by the City pursuant to
6 the Sale Agreement), the Clerk of the Board of Supervisors and the Director of Property shall
7 be authorized and the Clerk shall be directed to record or cause to be recorded a certified
8 copy of the Ordinance ordering such vacation as provided in Section 8335(a) of the California
9 Streets and Highways Code, and thereupon such vacation shall be effective without any
10 further action by the Board of Supervisors. Furthermore, from and after the date this
11 Ordinance is recorded, the Easement Area will no longer constitute a public easement.

12 Section 6. In accordance with the recommendation of the Director of Property, the
13 Director of Property is hereby authorized to enter into the Sale Agreement and is hereby
14 authorized and directed to do any and all things to execute and deliver the Sale Agreement
15 and all other documents in addendum with respect to the Sale Agreement which the Director
16 of Property or the City Attorney may deem necessary or achievable to effectuate the purpose
17 or intent of the conveyance of the Easement Area.

18 Section 7. All actions heretofore taken by the officers of the City with respect to the
19 vacation of the Easement Area is hereby approved, confirmed and ratified, and the Mayor,
20 Clerk of the Board, Director of Property, and Director of Public Works are hereby authorized
21 and directed to take any and all actions which they or the City Attorney may deem necessary
22 or advisable in order to effectuate the purpose and intent of this Ordinance (including, without
23 limitation, confirmation of satisfaction of any of the conditions to the effectiveness of the
24 vacation of the Easement Area hereunder, which shall be conclusive as to the satisfaction of
25 such conditions upon signature by any such City official or his or her designee).

1 RECOMMENDED:

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3 _____
4 Kenneth E. Winters
5 Acting Director of Property

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7 _____
8 Edwin M. Lee
9 Director of Public Works

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12 _____
13 Robert Beck
14 Deputy Director for Engineering

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17 APPROVED AS TO FORM:
18 Dennis J. Herrera, City Attorney

19

20 By: _____
21 E. Venessa Henlon
22 Deputy City Attorney

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DESCRIPTION APPROVED:

John R. Martin
County surveyor