

1 [Vacation of the Ingleside Path.]

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3 **Resolution declaring the intention of the Board of Supervisors to vacate the Ingleside**  
4 **Path right-of-way between Ocean Avenue and Corona Street and Urbano and Head**  
5 **Streets; setting the hearing date for all persons interested in the proposed vacation of**  
6 **the street area; and adopting environmental findings and findings that the vacation is**  
7 **consistent with the City’s General Plan and the eight priority policies of Planning Code**  
8 **Section 101.1.**

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10 WHEREAS, The vacation of the Ingleside path right-of-way between Ocean Avenue  
11 and Corona Street and Urbano and Head Streets (the “Vacation Area”) in the City and County  
12 of San Francisco (the “City”) has been proposed in order to facilitate (a) improved safety of  
13 adjacent residents and citizens and appropriate treatment for substantial existing private  
14 encroachments on the Ingleside Path and (b) a quit claim of the City's interest in the Path to  
15 the abutting property owners pursuant to the terms of sale agreements and quit claim deeds  
16 substantially in the form attached hereto. Copies of said sale agreements and quit claim  
17 deeds are on file with the Clerk of the Board of Supervisors in File No. , and are  
18 hereby declared to be a part of this Resolution as if set forth fully herein; and,

19 WHEREAS, An examination of the Ingleside Terrace subdivision map and San  
20 Francisco Ordinance No. 3547 reveal that the paths in the subdivision were not expressly  
21 dedicated to the City. A copy of said Ordinance is on file with the Clerk of the Board of  
22 Supervisors in File No. and is incorporated herein by reference. However, the  
23 general public used the paths for many years, and, as such, the City acquired an implied  
24 common-law dedication through the public's use of the walkways; and,

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1           WHEREAS, California case law indicates that an implied common-law dedication  
2 acquired by public use can be abandoned if there is evidence of a clear intent to abandon the  
3 subject property or nonuse. Here, the City manifest its intent to abandon the paths both  
4 expressly and implicitly. In a letter dated November 19, 1997, then-Chief of the Department of  
5 Public Work's Bureau of Street-Use and Mapping, Denise Brady, wrote to an Ingleside  
6 Terrace property owner stating that the walkways were private streets belonging to the  
7 homeowners' association. A copy of said letter is on file with the Clerk of the Board of  
8 Supervisors in File No.           and is incorporated herein by reference. Additionally, the City  
9 allowed the pathways to be fenced off from general public use, which eliminated public use of  
10 the pathways for at least 10 years. The City also took no action to prevent property owners  
11 from constructing various improvements over such pathways at significant cost to such  
12 owners. Because the City treated these paths as private and allowed fences that precluded  
13 all public access for many years, the paths have been abandoned through nonuse. Further,  
14 as a result of the City's written characterization of these paths as private and its acquiesce in  
15 allowing adjacent property owners to modify the paths for private use, the City expressly and  
16 implicitly abandoned them as public ways; and,

17           WHEREAS, Notwithstanding that the City has abandoned these paths as public ways,  
18 the City finds for purposes of constructive notice and in furtherance of its historic practice of  
19 following State law procedures to vacate and convey City rights in public ways that it will  
20 proceed with vacation of such ways in accordance with the California Streets and Highways  
21 Code Sections 8300 et seq.; and,

22           WHEREAS, The Vacation Area is shown in the Department of Public Works Map No.  
23 , dated           , 2007, a copy of which is on file with the Clerk in File No.  
24 and is incorporated herein by reference; and,

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1 the Director of Public Works that (1) reasonable alternative utility service has been provided to  
2 the areas served by such utilities for the period of service needed or (2) the areas served by  
3 the utilities no longer require such service (as may be evidenced by written notice of the  
4 owners being served that such service is no longer required); and,

5 WHEREAS, Any removal or relocation of a utility for which an easement or license has  
6 been reserved or excepted herein for the benefit of any party shall be performed at no cost or  
7 expense to the City, provided that nothing herein shall be deemed to preclude any future  
8 owner of any portion of the Vacation Area from charging a third party for or otherwise causing  
9 a third party to bear the costs of such relocation where such charge or cost is otherwise  
10 permitted by law; and,

11 WHEREAS, Except as specifically provided above, the public convenience and  
12 necessity require no other easements or rights be reserved for any public utility facilities that  
13 are in place in the Vacation Area and that any rights based on any such public utility facilities  
14 be extinguished; and,

15 WHEREAS, On \_\_\_\_\_, 2007, the Director of City Planning (the "Director of  
16 Planning") sent a letter, a copy of which is on file with the Clerk of the Board of Supervisors in  
17 File No. \_\_\_\_\_ and incorporated herein by reference, wherein the Director of Planning (a)  
18 found that the proposed vacation of the Vacation Area and associated quit claim of the City's  
19 interest therein are, on balance, in conformity with the City's General Plan and consistent with  
20 the eight priority policies of Planning Code Section 101.1 and (b) determined that the actions  
21 contemplated in this Resolution are in compliance with the California Environmental Quality  
22 Act (California Public Resources Code Sections 21000 et seq.); and,

23 WHEREAS, Section 787(a) of the San Francisco Public Works Code provides that the  
24 City will follow the procedure for vacating public right-of-ways as set forth in State law in the  
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1 California Streets and Highways Code Sections 8300 et seq. and such rules and conditions as  
2 are adopted by the Board of Supervisors; now, therefore, be it

3 RESOLVED, That the vacation proceeding of the Vacation Area is conducted under the  
4 general vacation procedures of the Public Streets, Highways and Service Easements  
5 Vacation Law (California Streets and Highways Code Sections 8300 et seq.); and, be it

6 FURTHER RESOLVED, That under these provisions of the Streets and Highways  
7 Code, the Board of Supervisors hereby declares that it intends to order the vacation of the  
8 Vacation Area, as described in Map No. referred to above; and, be it

9 FURTHER RESOLVED, That the vacation of the Vacation Area shall be conditioned  
10 upon and shall not become effective until the Clerk of the Board of Supervisors records or  
11 causes to be recorded a certified copy of the Ordinance ordering such vacation as provided in  
12 Section 8325(a) of the California Streets and Highways Code, and thereupon such vacation  
13 shall be effective without any further action by the Board of Supervisors; and, be it

14 FURTHER RESOLVED, That notice is hereby given that on the day of ,  
15 2007, beginning at approximately 4:00 p.m. in the Legislative Chambers of the Board of  
16 Supervisors, all persons interested in or objecting to the proposed vacation will be heard; and,  
17 be it

18 FURTHER RESOLVED, That the Board of Supervisors adopts as its own, the findings  
19 in the Director of Planning's letter referred to above, including the determination of compliance  
20 with the California Environmental Quality Act and findings that the proposed vacation of the  
21 Street Area and quit claim of the City's interest therein are consistent with the General Plan  
22 and the priority policies of Planning Code Section 101.1; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors directs the Clerk to transmit to  
24 the Department of Public Works a certified copy of this resolution, and the Board of  
25 Supervisors urges the Director of Public Works to publish and post this Resolution promptly in

1 the manner required by law and to give notice of the hearing of such contemplated action in  
2 the manner required by law.

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