

1 [Summary Vacation, Jurisdictional Transfer, and Sale of City Property - Ocean Avenue and
2 Phelan Avenue]

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4 **Ordinance: (1) ordering the summary vacation of an approximately 17,050 square foot**
5 **portion of City property located near Ocean Avenue and Phelan Avenue pursuant to the**
6 **California Streets and Highways Code Sections 8330 et seq.; (2) authorizing the**
7 **jurisdictional transfer of such portion of City property from the Department of Public**
8 **Works to the Municipal Transportation Agency; (3) authorizing the sale of an**
9 **approximately 25,772 square foot portion of City property located near Ocean Avenue**
10 **and Phelan Avenue to the San Francisco Redevelopment Agency for \$4,056,580 and**
11 **the grant of a pedestrian access easement and an emergency fire apparatus access**
12 **easement over a portion of adjacent City property; (4) adopting environmental findings**
13 **and other findings that the actions set forth in this Ordinance are consistent with the**
14 **City’s General Plan and Eight Priority Policies of City Planning Code Section 101.1; (5)**
15 **adopting findings that Administrative Code Chapter 23A does not apply to the sale of**
16 **such portion of City property; and (6) authorizing other actions in furtherance of this**
17 **Ordinance.**

18 Note: Additions are single-underline italics Times New Roman
19 deletions are ~~strikethrough italics Times New Roman~~
20 Board amendment additions are double underlined
21 Board amendment deletions are ~~strikethrough normal~~

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

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

25 A. The City owns a parcel located at Ocean Avenue and Phelan Avenue, known as
Assessor's Block Number 3180, Lot 001 (Property).

1 B. A portion of the Property (Rechanelization Road) comprised of approximately
2 17,050 square feet, which is depicted in the Department of Public Works' SUR Map No. SUR-
3 1674 dated June of 1974, is under the jurisdiction of the City's Department of Public Works
4 (DPW) through Board of Supervisors Resolution No. 590-75. Copies of such map and
5 resolution are on file with the Clerk of the Board of Supervisors in File No. _____ and
6 are incorporated herein by reference.

7 C. Although DPW has jurisdiction of the Rechanelization Road, the Rechanelization
8 Road and an approximately 25,772 square foot portion of the Property (Housing Parcel) are
9 both maintained and used by San Francisco Municipal Transportation Agency (SFMTA) for a
10 San Francisco Municipal Railway bus turnaround (Bus Turnaround), subject to the operation
11 and maintenance of certain subsurface water pipelines by the City's San Francisco Public
12 Utilities Commission (SFPUC Pipelines), all as shown on an aerial photograph and map on
13 file with the Clerk of the Board of Supervisors in File No. _____, which are incorporated
14 herein by reference.

15 D. SFMTA has determined that the Bus Turnaround operations could be relocated to
16 an adjacent portion of the Property under SFMTA's jurisdiction and, if SFMTA receives
17 sufficient funding to relocate such operations, the Housing Parcel will be surplus and no
18 longer needed for SFMTA's efficient and proper operations and could be transferred to a third
19 party subject to the SFPUC Pipelines.

20 E. The San Francisco Redevelopment Agency (Agency) wishes to purchase the
21 Housing Parcel for the adjusted appraised fair market value of \$4,056,580 and to develop a
22 mixed-use affordable housing development on the Housing Parcel (Project), subject to the
23 SFPUC Pipelines and in accordance with recommendations in the Balboa Park Station Area
24 Plan (Plan) adopted by the Board of Supervisors through Ordinance No. 60-09, a copy of
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1 which is on file with the Clerk of the Board of Supervisors in File No. _____ and is
2 incorporated herein by reference.

3 F. The Agency's Commission approved the purchase of the Housing Parcel for
4 \$4,350,000 pursuant to an Agreement for the Purchase and Sale of Real Property (Purchase
5 Agreement) through Resolution No. 115-2009 on October 20, 2009, and SFMTA's Board of
6 Directors approved the sale of the Housing Parcel for \$4,350,000 pursuant to the Purchase
7 Agreement through Resolution No. 09-196 on November 17, 2009. Copies of such
8 resolutions are on file with the Clerk of the Board of Supervisors in File No. _____ and
9 are incorporated herein by reference.

10 G. After receiving such initial approvals, the Agency requested that the City enter into
11 a First Amendment to Agreement for the Purchase and Sale of Real Property (Amendment) to
12 require that City grant the Agency a pedestrian access easement and an emergency fire
13 apparatus access easement on a portion of Property adjacent to the Housing Parcel
14 (Easements) at no cost if the Project building permit is conditioned on such Easements and to
15 adjust the purchase price if the Housing Parcel is comprised of less than 20,676 buildable
16 square feet.

17 H. The Agency's Commission approved the First Amendment through Resolution No.
18 28-2010 on April 6, 2010, and SFMTA's Board of Directors approved the First Amendment
19 through Resolution No. 10-051 on April 20, 2010. Copies of such resolutions are on file with
20 the Clerk of the Board of Supervisors in File No. _____ and are incorporated herein by
21 reference.

22 I. Agency and City staff have determined that the Housing Parcel is comprised of
23 18,950 buildable square feet, resulting in an adjusted purchase price of \$4,056,580.

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1 J. City must vacate the Rechannelization Road to allow for the transfer of the Housing
2 Parcel to the Agency pursuant to the Purchase Agreement, as amended by the First
3 Amendment, and accommodate the Agency's intent to develop the Project on the Housing
4 Parcel.

5 K. The Board of Supervisors transferred jurisdiction of the Rechannelization Road to
6 DPW in 1975 so DPW could rechannelize traffic to improve Municipal Railway service in the
7 area and reduce congestion at the intersection of Phelan and Ocean Avenues, as described
8 in Board of Supervisors Resolution No. 590-75, but in a memorandum to the Department of
9 Real Estate from the Department of Public Works dated December 10, 2010, the City and
10 County Surveyor of DPW has determined that Rechannelization Road has not been used for
11 such purposes and is not needed for DPW's activities, and DPW wishes to have jurisdiction of
12 the Rechannelization Road, and any other interest DPW may have in the Property, transferred
13 to SFMTA to accommodate the sale of the Housing Parcel and the Bus Turnaround
14 operations. Copies of such resolution and letter are on file with the Clerk of the Board of
15 Supervisors in File No. _____ and are incorporated herein by reference.

16 L. In a General Plan Referral recommendation dated November 5, 2010, the City's
17 Planning Department found that a jurisdictional transfer of the Rechannelization Road, a
18 summary vacation of the Rechannelization Road, a sale of the Housing Parcel to the Agency
19 and a grant of the Easements were all consistent with the City's General Plan and with
20 Planning Code Section 101.1(b). A copy of such letter is on file with the Clerk of the Board of
21 Supervisors in File No. _____ and is incorporated herein by reference. The Board of
22 Supervisors finds that the actions contemplated in this Ordinance are consistent with the
23 City's General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said
24 letter.

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1 M. DPW has advised the Real Estate Division that there are no in-place public utility
2 facilities in use on the Rechannelization Road that would be affected by the vacation of the
3 Rechannelization Road.

4 N. California Streets and Highways Code Section 8334 provides that the legislative
5 body of a local agency may summarily vacate an excess right-of-way of a street or highway
6 not required for street or highway purposes under certain circumstances. In particular,
7 Section 8334 provides that the legislative body of a local agency may summarily vacate a
8 portion of a public street if the street vacation area is no longer needed for street or highway
9 purposes. In addition, California Streets and Highways Code Section 8334.5 does not allow
10 for a summary vacation if there are any in-place public utility facilities that are in use and
11 would be affected by the vacation. As set forth above, the Rechannelization Road qualifies
12 for a summary street vacation process in accordance with the terms of the California Streets
13 and Highways Code.

14 O. In accordance with California Streets and Highways Code Sections 892 and 8314,
15 the Rechannelization Road is not useful as a nonmotorized transportation facility, as defined
16 in California Streets and Highways Code Section 887, because the Rechannelization Road is
17 primarily used for the Bus Turnaround and the Plan provides for alternate and enhanced
18 routes for nonmotorized transportation.

19 P. Under California Government Code Section 66428(a)(2), the County Surveyor has
20 determined that public policy does not require approval of a parcel map in association with the
21 conveyance of the Housing Parcel to the Agency and it is accordingly exempt from California
22 Government Code Sections 66410 *et seq.* (Subdivision Map Act).

23 Q. Under Motion No. 17774 on December 4, 2008, the San Francisco Planning
24 Commission (Planning Commission) certified the Final Environmental Impact Report (FEIR)

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1 for the Plan, which contemplated, among other things, the development of the Project at the
2 Housing Parcel. The Planning Commission also adopted environmental findings pursuant to
3 the California Environmental Quality Act (CEQA) and a Statement of Overriding
4 Considerations for significant and unavoidable transportation and historical resources
5 impacts, and established a Mitigation Monitoring Program that attaches mitigation measures
6 and improvement measures identified in the FEIR, all under Motion No. 17775 on December
7 4, 2008. The Board of Supervisors approved Ordinance No. 60-09 to adopt the Plan and, as
8 part of that action, also adopted the environmental findings of the Planning Commission as its
9 own. A copy of Ordinance No. 60-09, the FEIR and the Planning Commission motions,
10 including the environmental findings, Statement of Overriding Considerations, and Mitigation
11 Monitoring Program, are on file with the Clerk of the Board of Supervisors in File
12 No. _____ and are incorporated herein by reference.

13 R. In approving the sale of the Housing Parcel pursuant to the Purchase Agreement,
14 the SFMTA's Board of Directors relied on the FEIR and adopted the Planning Commission's
15 environmental findings, Statement of Overriding Considerations and Mitigation Monitoring
16 Program as its own and adopted additional findings that there was no new information
17 requiring subsequent environmental analysis in Resolution No. 09-196 on November 17,
18 2009, a copy of which is on file with the Clerk of the Board of Supervisors in File No.
19 _____ and is incorporated herein by reference. The Board of Supervisors adopts and
20 incorporates by reference these additional environmental findings of the SFMTA Board of
21 Directors as its own.

22 Section 2. In accordance with the recommendation of the Executive Director/CEO of
23 the SFMTA, the Director of DPW, and the Director of Property, the Board of Supervisors
24 hereby declares that the public interest or necessity will not be inconvenienced by the sale of
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1 the Housing Parcel and any grant of the Easements to the Agency pursuant to the Purchase
2 Agreement, as amended by the First Amendment.

3 Section 3. The Board of Supervisors hereby further declares that the public interest
4 and convenience require that the vacation of the Rechannelization Road be done as declared
5 in this Ordinance and that no easements or other rights be reserved for any public utility
6 facilities located on the Rechannelization Road and that any rights based upon any such
7 public utility facilities shall be extinguished automatically upon the effectiveness of the
8 vacation of the Rechannelization Road under this Ordinance.

9 Section 4. Under California Streets and Highways Code Sections 8330 *et seq.* (Public
10 Streets, Highways, and Service Easement Vacation Law, Summary Vacation) and San
11 Francisco Public Works Code Section 787, the Board of Supervisors hereby summarily
12 vacates Rechannelization Road in the manner described in this Ordinance and authorizes and
13 directs the Clerk of the Board of Supervisors and the Director of Property to record or cause to
14 be recorded a certified copy of this Ordinance ordering such vacation of the Rechannelization
15 Road as provided in California Streets and Highways Code Section 8335(a). On recordation
16 of this Ordinance, such vacation shall be effective without any further action by the Board of
17 Supervisors. Furthermore, from and after the date this Ordinance is recorded, the
18 Rechannelization Road will no longer constitute a public street.

19 Section 5. The Board of Supervisors hereby authorizes the Executive Director/CEO of
20 SFMTA and the Director of Property, each on behalf of the City and County of San Francisco,
21 to enter into and consummate the transactions contemplated under the Purchase Agreement,
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1 as amended by the First Amendment, including the purchase and sale of the Housing Parcel
2 for \$4,056,580 and the grant of the Easements on the conditions specified in the First
3 Amendment.

4 Section 6. The sale of the Housing Parcel to the Agency pursuant to the Purchase
5 Agreement and the First Amendment shall not be subject to Chapter 23A of the San
6 Francisco Administrative Code, the Surplus City Property Ordinance.

7 Section 7. The Mayor, Clerk of the Board of Supervisors, Controller, the Executive
8 Director/CEO of SFMTA and the Director of Property are each hereby authorized and directed
9 to take any and all actions which they, in consultation with the City Attorney, determine are in
10 the best interest of the City, do not materially increase the obligations of the City or materially
11 decrease the benefits to the City, are necessary or advisable to consummate the performance
12 of the purposes and intent of this Ordinance, and comply with all applicable laws, including the
13 City's Charter, including any modifications or amendments to the Purchase Agreement or the
14 First Amendment.

15 RECOMMENDED:
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17 _____
18 Amy L. Brown
19 Director of Property

20 _____
21 Nathaniel P. Ford Sr.
22 Executive Director/CEO
23 San Francisco Municipal Transportation Agency

24 _____
25 Edward D. Reiskin
Director of Public Works

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: Carol Wong, Deputy City Attorney
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