

1 [Findings in Support of Granting Petition for Revocation of the Major Encroachment Permit -
2 Pedestrian Bridge Spanning Kearny Street from the Hilton Hotel to Portsmouth Square]

3 **Motion adopting findings in support of the Board's decision to grant the petition and**
4 **revoke the major encroachment permit for a pedestrian bridge spanning Kearny Street**
5 **from the Hilton Hotel to Portsmouth Square.**

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7 WHEREAS, On April 27, 1970, the Board of Supervisors adopted Resolution No. 238-
8 70, Granting Permission for Justice Investors to Occupy a Portion of Kearny Street Between
9 Washington and Merchant Streets for a Pedestrian Bridge ("Major Encroachment Permit"); the
10 Major Encroachment Permit is on file with the Clerk of the Board of Supervisors in File No.
11 220327 and is incorporated in this Motion as though set forth in its entirety; and

12 WHEREAS, The Major Encroachment Permit authorized Justice Investors (Permittee)
13 to construct and maintain an ornamental overhead pedestrian bridge between the Chinese
14 Cultural Center complex (750 Kearny Street, Assessor's Parcel Block No. 0208, Lot No. 024)
15 and Portsmouth Square (Assessor's Parcel Block No. 0209, Lot No. 017), subject to certain
16 conditions; and

17 WHEREAS, The permission granted by the Major Encroachment Permit is revocable at
18 the will of the Board of Supervisors, and requires the Permittee, their heirs or assigns, to
19 "remove or cause to be removed the encroachment permitted by said resolution and all
20 materials used in connection with its construction without expense to the City and County of
21 San Francisco, and shall restore the area to a condition satisfactory to the Department of
22 Public Works[;]" and

23 WHEREAS, On January 13, 2022, by Motion No. 21508, the Planning Commission
24 certified the Final Environmental Impact Review ("EIR") for the Portsmouth Square
25 Improvement Project ("Project"); the Project includes, among other improvements to

1 Portsmouth Square, demolishing and removing the pedestrian bridge spanning Kearny Street
2 that connects Portsmouth Square to Hilton Hotel at 750 Kearny Street; the Planning
3 Commission determined that the Final EIR for the Project reflects the independent judgment
4 and analysis of the City and County of San Francisco, is adequate, accurate and objective,
5 and in compliance with the California Environmental Quality Act (California Public Resources
6 Code, Sections 21000 et seq.) and Chapter 31 of the Administrative Code; and

7 WHEREAS, On May 25, 2018, 25 petitioners submitted a Street Encroachment Permit
8 Revocation Petition (“Petition”) to the Department of Public Works to revoke the Major
9 Encroachment Permit; and

10 WHEREAS, Pursuant to Public Works Order No. 188406, a Director’s Hearing was
11 convened by the Director of Public Works on October 10, 2018, to hear the Petition, receive
12 public comment and evidence in support of and opposing the Petition; and

13 WHEREAS, According to Public Works Code, § 786(e)(2)(B)(v), “If the Director does
14 not issue a final written decision resolving a petition filed under this subsection (e)(2) within
15 180 days of the filing of the petition, then five members of the Board of Supervisors may
16 subscribe to a notice requesting an administrative hearing regarding the permit revocation at
17 the Board of Supervisors[;]” and

18 WHEREAS, Following the Director’s hearing in this case, the Director of Public Works
19 did not issue a final written decision resolving the Petition; and

20 WHEREAS, On March 1, 2022, five members of the Board of Supervisors submitted a
21 notice requesting an administrative hearing regarding the Petition; and

22 WHEREAS, By memorandum dated March 24, 2022, the Department of Public Works
23 determined that the Permittee is responsible for all the costs of removal of the pedestrian
24 bridge in the event that the Major Encroachment Permit is revoked, and estimated that the
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1 costs for removal of the bridge, including construction management costs and traffic control
2 will total to \$2,125,200; and

3 WHEREAS, On April 12, 2022, this Board held a duly noticed public hearing to
4 consider the Petition; and by passing Motion No. M22-054 took action within the statutory
5 deadline to revoke the Major Encroachment Permit and require the permit holder to remove or
6 cause to be removed the encroachment and all materials used in connection with its
7 construction without expense to the City and County of San Francisco, and restore the area to
8 a condition satisfactory to the Department of Public Works; and

9 WHEREAS, This Board has reviewed and considered the Major Encroachment Permit,
10 the Petition and related files of the Department of Public Works, the other written records
11 before the Board of Supervisors including all responses submitted to the Petition, and heard
12 testimony and received public comment regarding the Major Encroachment Permit; and

13 WHEREAS, Public Works Code, § 786(d) requires that the Board adopt findings
14 concerning the basis for its revocation, the cost of any revocation and associated restoration,
15 and the identity of the responsible party that shall bear such cost if it is a party other than the
16 Permittee; now, therefore, be it

17 MOVED, That the Board finds that the Permittee has failed to maintain the
18 encroachment under the terms of the permit, in light of evidence presented in the record and
19 at the hearing that:

- 20 • Notwithstanding the fact that the permit requires that the overpass “be open to
21 the public at all times,” the bridge is regularly locked and closed to the public for
22 private events, including but not limited to private events held by the Chinatown
23 Hilton and during the annual Chinese New Year’s parade, pictures of which
24 events are included in the Board file; and
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- Notwithstanding the fact that the permit requires the permittee to submit a certificate of insurance to the Controller, the permittee indicated at the April 12, 2022, hearing that he was not familiar with this longstanding requirement, and did not submit the certificate of insurance to the Controller until April 28, 2022.

FURTHER MOVED, That the Board finds that the encroachment presents a significant health or safety hazard, in light of evidence presented in the record and at the hearing that:

- The bridge casts a shadow on the immediate neighborhood, eliminating public access to sunlight and creating an unhealthy environment that cannot be mitigated without revocation of the permit; and
- The area under the bridge is dark, unsafe, and leads to illegal activity, which cannot be mitigated without revocation of the permit; and
- The bridge has long been a popular place for illegal skateboarding given the curvature of its walls as a part of the “ill-conceived” design of the bridge, which has been a long-standing safety concern for the significant population of seniors that use Portsmouth Square and the bridge when it's open to the public, further deterring public use; and, be it

FURTHER MOVED, That the Board finds that the encroachment creates severe and negative impacts on the surrounding neighborhood that cannot be mitigated, in light of evidence presented in the record and at the hearing that:

- Members of the Chinese immigrant community in Chinatown have long raised concerns about the original design of the bridge, noting at the Board of Supervisors hearing that the impacts of the “ill-conceived design” of this “outdated fixture of brutalist architecture” typical of the redevelopment period is now inconsistent the culturally sensitive context in which it occupies; and

- The low-hanging protruding design of the bridge impacts clear wayfinding to the entrance of the Portsmouth Square garage; and
- The design of the bridge creates pockets of “dead space” on the Kearny Street side of Portsmouth Square under the bridge that have become attractive areas for tent encampments and illegal dumping due to their incompatibility with other recreation and park purposes, which cannot be mitigated without revocation of the permit; and, be it

FURTHER MOVED, That the costs for removal of the bridge, including construction management costs and traffic control, is estimated to be \$2,125,200, which costs shall be borne by the Permittee, as stipulated in the original Street Encroachment Agreement.

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