

BOARD of SUPERVISORS



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MEMORANDUM

TO: Andrico Penick, Director, Real Estates Division

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: May 26, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by the Office of the City Attorney:

File No. 200442

Ordinance approving an Easement Deed and Agreement between the City and County of San Francisco and Millennium Tower Association, for certain surface and subsurface rights in a portion of the sidewalk on the southern side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern side of Fremont Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission Street high-rise building known as Millennium Tower, contingent on a number of events, including court approval of a class action settlement of the Millennium Tower Litigation; waiving requirements of Administrative Code, Chapter 23; authorizing the Director of Property to execute real estate documents, make certain modifications, and take actions in furtherance of this Ordinance, as defined herein; adopting environmental findings under the California Environmental Quality Act; and adopting findings that the easement is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org

1 [Grant of Easement - Millennium Tower Association - Millennium Tower 301 Mission
2 Perimeter Pile Upgrade Project - \$0]

3 **Ordinance approving an Easement Deed and Agreement between the City and County**
4 **of San Francisco and Millennium Tower Association, for certain surface and**
5 **subsurface rights in a portion of the sidewalk on the southern side of Mission Street at**
6 **the intersection of Mission and Fremont Streets and on the eastern side of Fremont**
7 **Street at the same intersection, for \$0, to allow a structural upgrade of the 301 Mission**
8 **Street high-rise building known as Millennium Tower, contingent on a number of**
9 **events, including court approval of a class action settlement of the Millennium Tower**
10 **Litigation; waiving requirements of Administrative Code, Chapter 23; authorizing the**
11 **Director of Property to execute real estate documents, make certain modifications, and**
12 **take actions in furtherance of this Ordinance, as defined herein; adopting**
13 **environmental findings under the California Environmental Quality Act; and adopting**
14 **findings that the easement is consistent with the General Plan, and the eight priority**
15 **policies of Planning Code, Section 101.1.**

16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
17 **Additions to Codes** are in *single-underline italics Times New Roman font*.
18 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
19 **Board amendment additions** are in double-underlined Arial font.
20 **Board amendment deletions** are in ~~strikethrough Arial font~~.
21 **Asterisks (* * * *)** indicate the omission of unchanged Code
22 subsections or parts of tables.

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

24 Section 1. General Findings, Environmental Findings, and General Plan Consistency
25 Findings.

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1 (a) This ordinance is companion legislation to related Board of Supervisors actions
2 including Resolution No. 069-20 regarding a public trust exchange (“Public Trust Exchange
3 Resolution”) for portions of public right-of-way affected by the 301 Mission Street Millennium
4 Tower Perimeter Pile Upgrade Project (the “Project”), Ordinance No. 44-20 vacating portions
5 of the public right-of-way for the Project (“Street Vacation Ordinance”), and the ordinance
6 approving settlement of the Millennium Tower Litigation (“Settlement Ordinance”). The
7 companion legislation is in Clerk of the Board of Supervisors File Nos. 191286, 191253, and
8 200290, respectively, and is incorporated herein by reference.

9 (b) The Street Vacation Ordinance adopted general findings about the public purposes
10 supporting the Project, environmental findings under the California Environmental Quality Act
11 (California Public Resources Code Sections 21000 et seq. (“CEQA”)), and Planning
12 Department findings that the Project is, on balance, consistent with the General Plan and with
13 the eight priority policies of Planning Code Section 1 01.1. This ordinance is within the scope
14 of the City’s CEQA review. In addition, the Planning Department’s General Plan and Planning
15 Code Section 101.1 consistency findings covered the real estate conveyance contemplated in
16 this ordinance. For purposes of this ordinance, the Board of Supervisors adopts the general
17 findings, CEQA environmental findings, and General Plan consistency findings (including
18 Planning Code Section 101.1 findings) as though fully set forth herein that are in the Street
19 Vacation Ordinance on file with the Clerk of the Board of Supervisors in File No. 191253.
20

21 Section 2. Background and Millennium Tower Litigation.

22 (a) The Project is associated with the 50,500-square-foot (1.16-acre) parcel
23 (Assessor’s Parcel Block No. 3719, Lots 020–440) at 301 Mission Street located on the south
24 side of Mission Street between Fremont and Beale Streets within San Francisco’s Financial
25 District (“Property”). The existing high-rise building on the Property is called the Millennium

1 Tower ("Tower"). The Tower covers a footprint of approximately 32,960 square feet and its
2 foundation system consists of a 10-foot-thick reinforced concrete mat foundation.

3 (b) According to information provided by the Millennium Tower Association, a
4 California non-profit public benefit corporation ("Project Sponsor"), since completion of
5 construction of the Tower in 2009, the area around the Tower and the Property has
6 experienced settlement, and is tilting to the northwest near the corner of Mission and Fremont
7 Streets.

8 (c) The Project consists of a structural upgrade of the Tower building foundation that
9 includes installation of a horizontal extension of the existing mat foundation for the Tower
10 building within an approximately 8-foot-wide zone beneath the public right-of-way sidewalk
11 area and immediately adjacent to the Tower along Fremont and Mission Streets, supported by
12 52 new piles extending to bedrock. The 52 new piles are referred to as "perimeter piles" and
13 the extended mat foundation is referred to as the "collar foundation." In addition to preventing
14 further settlement in the northwest corner of the Tower's existing foundation, the Project
15 Sponsor has stated that this effort may allow for gradual tilt correction of the Tower over time.

16 (d) The permanently installed perimeter piles and collar foundation would occupy a
17 portion of current public right-of-way on Mission and Fremont Streets that is subject to the
18 public trust doctrine, which designation would be removed by the public trust exchange
19 described in the Public Trust Exchange Resolution.

20 (e) The Street Vacation Ordinance authorizes the vacation of the sidewalk portions of
21 Mission and Fremont Streets near the Mission and Fremont Streets intersection (collectively,
22 the "Vacation Area"), as more particularly described in the Street Vacation Ordinance, to allow
23 a portion of the Vacation Area to be permanently occupied by the Project.

24 (f) The City proposes to grant an easement to the Project Sponsor for certain surface
25 and subsurface rights in a portion of the Vacation Area consisting of sidewalk on the southern

1 side of Mission Street at the intersection of Mission and Fremont Streets and on the eastern
2 side of Fremont Street at the same intersection (the "Easement"), for \$0, to allow the
3 construction, installation, maintenance, monitoring, and repair of the Project on the terms and
4 conditions described in the Easement. A copy of the Easement is on file with the Clerk of the
5 Board of Supervisors in File No. 200442, the file for this ordinance.

6 (g) To accommodate the Project and the Easement, the City will temporarily vacate
7 the Vacation Area prior to granting and recording the Easement. Once the street vacation
8 occurs and the Easement is granted and recorded, the City will restore the street status of the
9 Vacation Area so that it will continue in its current form as a dedicated public right-of-way.
10 When the Easement is effective and recorded, the Vacation Area will be rededicated to public
11 use for street and right-of-way purposes subject to the Easement.

12 (h) The Millennium Tower Litigation involves claims arising out of the settlement and
13 tilt of the Tower, and is comprised of all complaints and associated cross-claims and cross-
14 complaints coordinated and/or consolidated under the case entitled, *Laura S. Lehman v.*
15 *Transbay Joint Powers Authority, et al.*, Case Number CGC-16-553758 in the Superior Court
16 of San Francisco, as more particularly described in the Settlement Ordinance. The Settlement
17 Ordinance approved the global settlement of the Millennium Tower Litigation on the terms
18 described in the Settlement Ordinance.

19
20 Section 3. Grant of Easement; Waiver of Administrative Code Chapter 23.

21 (a) The City has agreed to grant the Easement to the Project Sponsor as part of the
22 global settlement of the Millennium Tower Litigation. But for the global settlement, the Board
23 of Supervisors would not authorize the grant of the Easement.

24 (b) The global settlement, and the City's obligation to grant and record the Easement,
25 are contingent on the occurrence of a number of events described in more detail in the

1 settlement documents incorporated into the Settlement Ordinance (the “Settlement
2 Documents”), including, but not limited to, court approval of a class action settlement
3 agreement and dismissal of the City from all cases in the Millennium Tower Litigation to which
4 the City is a party. The City will not grant the Easement to the Project Sponsor until the
5 Settlement Ordinance is final and effective, and all conditions to the grant of the Easement set
6 forth in the Settlement Documents have occurred or been excused.

7 (c) The Board of Supervisors finds that (1) the public interest or necessity will not be
8 inconvenienced by the grant of the Easement to the Project Sponsor, (2) offering the
9 Easement by a competitive bidding process or auction would be impractical, and (3) the grant
10 of the Easement in exchange for, among other things, certain releases, covenants, and
11 dismissals, as set forth in the Settlement Documents, will serve the public purpose of
12 resolving claims against the City.

13 (d) The Board of Supervisors hereby waives the requirements of Administrative Code
14 Chapter 23 with respect to the Easement.

15 (e) The Board of Supervisors hereby approves the Easement and the transaction
16 contemplated thereby in substantially the form of said Easement on file with the Clerk of the
17 Board of Supervisors in File No. 200442, and authorizes the Director of Property, in the name
18 and on behalf of the City, to execute the Easement, contingent upon (1) the Settlement
19 Documents becoming final and effective, and (2) all conditions to the granting of the
20 Easement set forth in the Settlement Documents occurring or being excused.

21 (f) The Board of Supervisors authorizes the Director of Property to enter into any
22 amendments or modifications to the Easement that the Director of Property determines, in
23 consultation with the City Attorney, are in the best interest of the City, do not otherwise
24 materially diminish the benefits to the City or increase the obligations or liabilities of the City,
25 are necessary or advisable to effectuate the purposes of the Easement, and are in

1 compliance with all applicable laws, including the City Charter.

2 (g) The Director of Property is hereby authorized and urged, in the name and on behalf
3 of the City, to take any and all steps (including, but not limited to, the execution and delivery of
4 any and all certificates, agreements, notices, consents, escrow instructions, closing
5 documents and other instruments or documents) as the Director of Property, in consultation
6 with the City Attorney, deems necessary or appropriate in order to consummate the grant of
7 the Easement, or to otherwise effectuate the purpose and intent of this ordinance, such
8 determination to be conclusively evidenced by the execution and delivery by the Director of
9 Property of any such documents.

10

11 Section 4. Transmittal to Clerk.

12 Within 30 days of the execution and recordation of the Easement, the Director of
13 Property shall provide a copy of the recorded easement to the Clerk of the Board of
14 Supervisors for the Board's file.

15

16 Section 5. Effective Date.

17 This ordinance shall become effective 30 days after enactment. Enactment occurs
18 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
19 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
20 Mayor's veto of the ordinance.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Eileen Malley
24 EILEEN MALLEY
25 Deputy City Attorney

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