

Amendment of the Whole
March 26, 2007.

FILE NO. 070262

ORDINANCE NO.

1 [Mint Plaza public improvements on a portion of Jessie, and Mint, ~~and Stevenson~~ Streets.]

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3 **Ordinance approving the issuance of a major encroachment permit and encroachment**
4 **maintenance agreement to Friends of Mint Plaza to permit the construction and**
5 **maintenance of certain improvements on Jessie and Mint Streets ~~and a portion of~~**
6 **~~Stevenson Street near the intersection of Fifth Street~~, including authorization to allow**
7 **certain specified uses and occupancy in said area, including café tables and chairs and**
8 **moveable public seating; waiving public right-of-way occupancy assessment fees for**
9 **said permit; conditionally accepting an offer from Friends of Mint Plaza for said**
10 **improvements; conditionally dedicating said improvements for public use and**
11 **designating portions of Jessie and Mint Streets as a public plaza; making**
12 **environmental findings and findings of consistency with the General Plan and Planning**
13 **Code Section 101.1; accepting offers of quitclaim deeds for abutters' rights of vehicular**
14 **access to Jessie Street; and authorizing official acts in furtherance thereof.**

15 Note: Additions are *single-underline italics Times New Roman*;
16 deletions are *strikethrough italics Times New Roman*.
17 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

19 Section 1. Findings.

20 (a) On May 16, 2006, and June 20, 2006, the Urban Preservation Foundation, doing
21 business as Friends of Mint Plaza, a California nonprofit corporation, ("FMP"), in coordination
22 with the Planning Department, the Mayor's Livable City Initiative and Supervisor Daly's office
23 hosted a series of publicly-noticed community workshops to share information about the
24 potential to transform portions of Jessie and Mint Streets into a new pedestrian plaza and to
25 collect specific feedback on design ideas and programming. Approximately 70 community

1 stakeholders attended each community workshop. Feedback from these two workshops
2 informed the development of a schematic design proposal and street improvement permit to
3 create a new pedestrian plaza on a portion of Jessie and Mint Streets.

4 (b) On July 14, 2006, FMP submitted a street improvement permit application to the
5 Department of Public Works ("DPW") to close a portion of the Jessie and Mint Street public
6 right-of-ways to automobile traffic and install certain improvements thereon and on a portion of
7 the ~~Stevenson and~~ Mint Street public right-of-ways not closed to automobile traffic
8 (collectively, the "Mint Plaza Public Improvements").

9 (c) On July 17, 2006, after a duly noticed public hearing, the Civic Design Review
10 Committee of the San Francisco Arts Commission, recommended that the full Arts
11 Commission grant Phase 1 Schematic Design approval for the Mint Plaza Public
12 Improvements, as set forth in the street improvement permit application.

13 (d) On July 19, 2006, after a duly noticed public hearing, the San Francisco
14 Landmarks Preservation Advisory Board (LPAB), reviewed and commented on the proposed
15 Mint Plaza Public Improvements.

16 (e) On September 11, 2006, after a duly noticed public hearing, the Arts Commission
17 approved Resolution No. 0911-06-164, granting Phase 1 Schematic Design approval for the
18 Mint Plaza Public Improvements as set forth in the street improvement permit contingent upon
19 further study of the entry grove along Fifth Street. A copy of said Resolution is ~~on file with the~~
20 Clerk of the Board of Supervisors in File No. _____ available on the Arts
21 Commission website and is incorporated herein by reference.

22 (f) On September 14, 2006, after a duly noticed public hearing, the Planning
23 Commission approved Resolution No. 17308 finding that the Mint Plaza Public Improvements
24 set forth in the street improvement permit application were, on balance, in conformity with the
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1 General Plan, based on its consistency with the policies and objectives of the Transportation,
2 Urban Design and Downtown Elements of the General Plan. A copy of said Resolution is on
3 file with the Clerk of the Board of Supervisors in File No. 070262 and is incorporated herein by
4 reference.

5 (g) On September 28, 2006, after a duly noticed public hearing, ISCOTT approved the
6 ~~street improvement permit for the~~ Mint Plaza Public Improvements as set forth in the street
7 improvement permit application.

8 (h) On October 3, 2006, after a duly noticed public hearing, this Board approved
9 Resolution No. 579-06 recommending approval of the formation of a Community Facilities
10 District ("CFD") and the issuance of special tax bonds ~~to construct the Mint Plaza Public~~
11 ~~Improvements~~ by the Association of Bay Area Governments-Finance Authority For Nonprofit
12 Corporations (ABAG-FANC) ~~related~~ to construct the Mint Plaza Public Improvements as set
13 forth in the street improvement permit application; making findings; approving a related joint
14 community facilities agreement; and granting general authority to City officials to take actions
15 necessary to implement said Resolution. A copy of said Resolution is on file with the Clerk of
16 the Board of Supervisors in File No. 061309 and is incorporated herein by reference.

17 (i) On November 3, 2006, after a duly noticed public hearing, the Department of
18 Parking and Traffic approved all traffic and transit changes related to the street improvement
19 permit application for the Mint Plaza Public Improvements.

20 (j) On December 5, 2006, after a duly noticed public hearing, the Board of the
21 Metropolitan Transportation Authority approved all traffic and transit changes related to the
22 street improvement permit application for the Mint Plaza Public Improvements.

23 (k) On December 20, 2006, after a duly noticed public hearing, the Executive
24 Committee of the Board of Directors of ABAG-FANC approved Resolutions 06-41, 06-42, 06-

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1 43, and 06-44, to finalize the formation of Community Facilities District No. 2006-2 (San
2 Francisco Mint Plaza Area). The CFD will facilitate the sale and delivery of a single series of
3 special property tax-secured debt by the Authority, of up to \$3.5 million, to finance the
4 construction of the Mint Plaza Public Improvements as set forth in the street improvement
5 permit application.

6 (l) On January 4, 2007, a map of Community Facilities District No. 2006-2 (San
7 Francisco Mint Plaza Area) and a Notice of Special Tax Lien were recorded in the City's
8 Recorder's Office.

9 (m) The Department of City Planning, by letter dated January 18, 2007, declared that
10 the actions contemplated herein are consistent with the General Plan and with the priority
11 policies of Planning Code Section 101.1. A copy of said letter is on file with the Clerk of the
12 Board of Supervisors in File No. 070102 and is incorporated herein by reference. The Board
13 adopts as its own the findings in said letter concerning consistency with the City's General
14 Plan and the priority policies of Planning Code Section 101.1.

15 (n) On February 1, 2007, at the request of FMP, the Department of Public Works
16 modified the street improvement permit application to include a major encroachment permit
17 application, pursuant to Public Works Code Section 786, to construct and maintain the Mint
18 Plaza Public Improvements and to allow for certain specified future activities and uses with
19 the on-Mint Plaza Public Improvements area.

20 (o) On February 26, 2006, after a duly noticed public hearing, the Civic Design Review
21 Committee of the San Francisco Arts Commission, recommended that the full Arts
22 Commission grant Phase 2 Design Development approval for the Mint Plaza Public
23 Improvements, incorporating recent changes made in the street improvement permit
24 application since the Committee's July 17, 2006. Phase 1 authorization.

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1 (p) On March 7, 2007, after a duly noticed public hearing, the Director of DPW
2 recommended approval of the proposed major encroachment permit application to construct
3 and maintain the Mint Plaza Public Improvements consistent with the street improvement
4 permit application as set forth in DPW Order No. 176,785, approved March 7, 2007. In
5 addition, this major encroachment permit ~~includes authorization to conduct~~ authorizes certain
6 specified uses and ~~occupancy~~ occupancies in the public right-of-way, including ~~installation of~~
7 permission to provide moveable café tables and chairs in up to five areas within the future
8 Mint Plaza Public Improvements area, which shall be subject to subsequent authorization
9 from the DPW Director but included as part of this encroachment permit. The permit also is
10 accompanied by a Memorandum of Agreement regarding maintenance of the Mint Plaza
11 Public Improvements ~~Maintenance Agreement~~ (the "Maintenance Agreement"). In DPW
12 Order No. 176,785, the Director further recommended that, contingent on completion of the
13 Mint Plaza Public Improvements and the City's Engineer's issuance of a notice of completion
14 that said improvements have been properly constructed according to the approved street
15 improvement permit plans on file with DPW and that such improvements are ready for their
16 intended use, this Board conditionally accept the offer from FMP for the Mint Plaza Public
17 Improvements, dedicate said improvements for public use, and designate Jessie Street
18 between 5th Street and its terminus at Mint Street as a pedestrian plaza. Copies of the DPW
19 Order, the major encroachment permit application, the street improvement permit application,
20 and associated design plans, and the Maintenance Agreement are on file with the Clerk of the
21 Board of Supervisors in File No. 070262 and are incorporated herein by reference.

22 (q) FMP has made an offer of dedication of the Mint Plaza Public Improvements to the
23 City (the "Offer of Dedication"). Said Offer also includes a commitment from FMP to maintain
24 the Mint Plaza Public Improvements Area conditioned on issuance of the abovementioned
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1 major encroachment permit and Maintenance Agreement to FMP. A copy of the Offer of
2 Dedication is on file with the Clerk of the Board of Supervisors in File No. 070262 and is
3 incorporated herein by reference.

4 Section 2. Environmental Findings. In Board of Supervisors Resolution No. 547-06,
5 this Board adopted findings pursuant to the California Environmental Quality Act (California
6 Public Resources Code Sections 21000 et seq., "CEQA") for the Old Mint project and related
7 actions. Said findings and associated materials are on file with the Clerk of the Board of
8 Supervisors in File No. 061225 and are incorporated herein by reference. The Board of
9 Supervisors reaffirms the abovementioned findings it made in accordance with CEQA for
10 purposes of the actions contemplated herein.

11 Section 3. Approval of Major Encroachment Permit and Waiver of Fees.

12 (a) Pursuant to Public Works Code Section 786 and notwithstanding Public Works
13 Code Sections 176 et seq. (café tables and chairs), 800 et seq. (planting of trees and right-of-
14 way landscaping), Section 724 et seq. (temporary occupancy of streets), Section 723.1
15 (sidewalk barriers), and any other Public Works Code sections applicable to use and
16 occupancy of streets or sidewalks that are contained within the scope of the major
17 encroachment ~~permit's terms~~permit application and consistent with the street improvement
18 permit plans, the Board hereby grants revocable permission to FMP to occupy a portion of
19 the public right-of-way to construct the Mint Plaza Public Improvements consistent with the
20 major encroachment permit, Maintenance Agreement, and street improvement permit and
21 plans, and subject to the conditions set forth herein ~~and those contained in the permit or its~~
22 ~~Maintenance Agreement~~. Said major encroachment permit also shall specifically allow for
23 future maintenance services of the Mint Plaza Public Improvements Area as set forth in the
24 Maintenance Agreement, moveable outdoor café tables and chairs ~~of~~ in up to five
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1 approximately 1,000 square foot areas within the Mint Plaza Public Improvement area for the
2 benefit of up to five future restaurants adjacent to ~~the Mint Plaza Improvements Area~~this area,
3 moveable public seating throughout the Mint Plaza Public Improvements Area for the use of
4 the general public along with ~~maintenance and~~ storage of such public seating by FMP, art,
5 music and food-related events and performances open to the public, farmers' markets, and
6 the temporary closure of portions of the Mint Plaza Public Improvements area for private
7 events. ~~The permit also authorizes other specific uses and occupancies of the public right-of-~~
8 ~~way as specifically described in the permit.~~ The Board hereby authorizes the DPW Director to
9 approve, subject to any conditions that the Director deems appropriate, such uses and
10 physical improvements that are specifically described in the major encroachment permit
11 application and consistent with the street improvement permit and plans. The Director shall
12 incorporate such uses and conditions into the major encroachment permit to establish a
13 record of such actions. Any proposed use or occupancy of the public right-of-way outside the
14 scope of those specifically described in the major encroachment permit approved herein shall
15 be subject to all applicable provisions of the Public Works Code and local law.

16 (b) In addition to the other conditions set forth herein, the Permittee, at the Permittee's
17 sole expense and as is necessary as a result of this permit, shall make the following
18 arrangements:

19 (1) To provide for the support and protection of facilities belonging to the
20 Department of Public Works, San Francisco Water Department, the San Francisco Fire
21 Department and other City Departments, and public utility companies;

22 (2) To provide future access from the Mint Plaza Public Improvement area to
23 such facilities to allow said entities to construct, reconstruct, maintain, operate, or repair such
24 facilities at said entities' sole expense; and,
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1 (3) To remove or relocate such facilities if installation of the Mint Plaza Public
2 Improvements encroachment requires said removal or relocation and to make all necessary
3 arrangements with the owners of such facilities, including payment for all their costs, should
4 said removal or relocation be required solely for the installation of ~~said encroachment~~the Mint
5 Plaza Public Improvements.

6 (c) The Permit also is subject to the following conditions:

7 (1) Permittee shall procure the necessary permits from the Central Permit
8 Bureau, Department of Building Inspection and/or Bureau of Street-Use and Mapping,
9 Department of Public Works, and pay all permit and inspection fees before starting work on
10 the Mint Plaza Public Improvements.

11 (2) No structures shall be erected or constructed within said street right-of-way
12 except as specifically permitted herein.

13 (3) The Permittee shall become a member of, participate in and share in the
14 costs associated with Underground Service Alert (U.S.A.) Northern California Region.

15 (4) ~~The~~ As set forth in the Maintenance Agreement, Permittee shall assume all
16 costs for the maintenance and repair of the ~~encroachments~~ Mint Plaza Public Improvements
17 and no cost or obligation related to the encroachments shall accrue to the Department of
18 Public Works or any other City entity by reason of this permission granted ~~as further set out in~~
19 ~~the Maintenance Agreement~~.

20 (5) As set forth in the Maintenance Agreement, Permittee's maintenance and
21 repair obligations for the Min Plaza Public Improvements shall be coterminous with this major
22 encroachment permit. The conditions of the major encroachment permit shall bind the future
23 assignees and transferees of such permit.

1 (d) Pursuant to Public Works Code Section 786, the Board finds that a benefit will
2 accrue to the public from this major encroachment permit, and therefore the Board hereby
3 waives the public right-of-way occupancy assessment fee as set forth in Public Works Code
4 Section 786.7.

5 (e) ~~The Permittee shall be subject to any permit and inspection fees associated with~~
6 ~~café tables and chairs for each specific area associated with a restaurant (up to five areas as~~
7 ~~set forth above) pursuant to Public Works Code Sections 2.1 et seq. Permittee shall pay the~~
8 annual processing fees for each café tables and chairs application within the Mint plaza Public
9 Improvements area, including the five areas contained in this major encroachment permit.
10 Permittee shall be subject to an annual Café tables and chair inspection fee for only a single
11 1,000 square foot area even though this major encroachment permit allows up to five 1,000
12 square foot area for café tables and chairs associated with restaurants, as set forth above.
13 Both the processing and inspection fees shall be based on the fee schedule in Public Works
14 Code Sections 2.1 et seq.

15 (f) Any violation of the vehicular access program to 424 Jessie Street, as specifically
16 described in Section 5 below, shall result in the immediate revocation of the major
17 encroachment permit and any other approval or authorization set forth herein.

18 Section 34. Conditional acceptance of FMP's Offer of Dedication; and Dedication for
19 Public Use.

20 (a) The Board of Supervisors hereby approves the recommendations contained in
21 DPW Order No. 176,785 regarding FMP's Mint Plaza Public Improvements.

22 (b) Contingent on completion of the Mint Plaza Public Improvements as set forth
23 above, the Board conditionally accepts FMP's Offer of Improvements.

1 (c) Contingent on completion of the Mint Plaza Public Improvements as set forth
2 above, the Board conditionally dedicates said improvements for public use and designates
3 Jessie Street between 5th Street and its terminus at Mint Street as a pedestrian plaza.

4 Section 45. Acceptance for Quitclaim Deeds for Vehicular Access from Jessie Street.

5 (a) ~~With one exception, all~~ All of the property owners adjacent to the portion of Jessie
6 ~~and Mint Streets~~ that will be permanently closed to Vehicular traffic support the closure of ~~this~~
7 ~~street to vehicular traffic~~ and, in furtherance thereof, have offered to the City quitclaim deeds
8 of abutters' rights for vehicular access to Jessie Street. The owner of property located at 424
9 Jessie Street and the City ~~are continuing to resolve~~ have agreed to allow limited vehicular
10 ~~access issues to that site~~ across the Plaza to said property for up to three vehicles between
11 the hours of 8 PM and 10 AM only, with certain exceptions for emergency and disabled
12 access. The quitclaim deeds are on file with the Clerk of the Board of Supervisors in File No.
13 070262 and are attached hereto by reference.

14 (b) The Board, on behalf of the City and County of San Francisco, accepts the offer
15 from the adjacent property owners of the quitclaim deeds of abutters' rights of vehicular
16 access to portions of Jesse Street in substantially the same form as those on file with the
17 Clerk of the Board of Supervisors.

18 Section 56. Authorization to Effectuate the Ordinance. The Board of Supervisors
19 approves and authorizes all necessary actions to effectuate the intent of this Ordinance and
20 directs the Clerk of the Board, the Director of the Department of Public Works, and the
21 Director of the Department of Real Estate to take any and all actions which they or the City
22 Attorney may deem necessary or advisable in order to effectuate the purpose and intent of
23 this Ordinance (including, without limitation, authorizing the Director of Real Estate to execute
24 and record the abovementioned quitclaim deeds of abutters' rights of vehicular access and
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1 authorizing the Director of the Department of Public Works to sign the aforementioned major
2 encroachment permit and Maintenance Agreement and filing such documents in the official
3 records of the Department of Public Works).

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RECOMMENDED: _____ APPROVED:

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Robert P. Beck
City Engineer and
Deputy Director for Engineering

Fred V. Abadi, Ph.D.
Director of Public Works

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12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By:

John D. Malamut
Deputy City Attorney

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