

1 [Settlement of Lawsuit - George Birmingham - City to Receive \$1,500,000 for Sale of Surplus
2 Parcels]

3 **Ordinance authorizing settlement of the lawsuit filed by George Birmingham against**
4 **the City and County of San Francisco; the lawsuit was filed on September 9, 2015, in**
5 **San Francisco Superior Court, Case No. CGC 15-547835; entitled George Birmingham**
6 **v. City and County of San Francisco, et al.; the lawsuit involves plaintiff's attempts to**
7 **gain street access for his parcel that is separated from Burnett Avenue by a paper**
8 **street owned by Public Works and a vacant Public Utilities Commission parcel; the**
9 **material terms of the settlement are the City will pursue the legislative approvals**
10 **necessary to sell the parcels to plaintiff, and plaintiff will purchase the parcels from the**
11 **City for \$1,500,000; and affirming the Planning Department's determination under the**
12 **California Environmental Quality Act.**

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

15 Section 1. The Planning Department has determined that the actions contemplated in
16 this ordinance comply with the California Environmental Quality Act (California Public
17 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
18 Board of Supervisors in File No. _____ and is incorporated herein by reference. The Board
19 affirms this determination.

20 Section 2. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
21 authorizes the City Attorney to settle the action entitled George Birmingham v. City and
22 County of San Francisco, et al., San Francisco Superior Court, Case No. CGC 15-547835, by
23 the material terms as set forth in the Settlement Agreement and Mutual Releases and Exhibits
24 ("Settlement Agreement") contained in Board of Supervisors File No. _____. Plaintiff's lawsuit
25 seeks an access route from his property to Burnett Avenue by traversing two City-owned

1 parcels: a vacant paper street titled Burnett North Avenue (“Public Works Property”) and a
2 surplus remnant of the Auxiliary Water Service System owned by the Public Utilities
3 Commission (“PUC Property”). The material terms of the Settlement Agreement include
4 Public Works vacating the Public Works Property and seeking approvals to sell the parcel to
5 Plaintiff; Public Utilities Commission seeking authorization from the Board of Supervisors to
6 sell the PUC Property to Plaintiff; the City seeking a rezoning of the parcels to Residential
7 Mixed Use Low Density (RM-1); Plaintiff agreeing to purchase the parcels for \$1,500,000, the
8 full appraised value at the time the lawsuit was filed; Plaintiff agreeing pay \$100,000 of the
9 City’s administrative costs; and on such other material terms as are set forth in the Settlement
10 Agreement and the Agreement for Sale of Real Estate (attached as Exhibit C to the
11 Settlement Agreement), contained in Board of Supervisors in File No. _____.

12 Section 2. The above-named action was filed in San Francisco Superior Court on
13 September 9, 2015, and the following parties were named in the lawsuit: City and County of
14 San Francisco; San Francisco Department of Public Works; San Francisco Public Utilities
15 Commission; and co-defendant the Burnett Terrace Condominiums Homeowners Association.

16 Section 3. The Public Utilities Commission authorized this Settlement Agreement by
17 Resolution No. 17-0078 on April 11, 2017. A copy of that resolution is contained in Board of
18 Supervisors File No. _____.

19 Section 4. On April 25, 2017, the Public Utilities Commission approved Resolution No.
20 17-0088, which adopted a finding declaring that Assessor’s Parcel Lot 23, Block 2719C, the
21 PUC Property, located on Burnett Avenue at Copper Alley in San Francisco, California is
22 surplus to the Public Utilities Commission’s utility needs; approved the terms and conditions
23 and authorized the General Manager to execute a Purchase and Sale Agreement with George
24 Birmingham to sell both the PUC Property and the adjacent Public Works Property, for a
25 combined sales price of \$1,500,000; approved the terms and conditions and authorized the

1 General Manager to execute a Reimbursement Agreement; and authorized a request to the
2 Board of Supervisors and the Mayor to approve the Parcel sale, subject to the terms of the
3 Purchase Agreement. A copy of that resolution is contained in Board of Supervisors File No.
4 _____.

5 Section 5. Pursuant to the Settlement Agreement, companion legislation proposes to:
6 amend the zoning designation of the PUC Property and Public Works Property, contained in
7 Board of Supervisors File No. _____ ; vacate the Public Works Property and approve the sale
8 of the Public Works Property and PUC Property to Plaintiff pursuant to the Agreement for Sale
9 of Real Estate (attached as Exhibit C to the Settlement Agreement), contained in Board of
10 Supervisors File No. _____.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney

ROBB W. KAPLA
Deputy City Attorney

RECOMMENDED:

SAN FRANCISCO DEPARTMENT OF
PUBLIC WORKS

MOHAMMED NURU
Director

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

HARLAN L. KELLY
General Manager

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

DONNA HOOD
Secretary

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