

1 [Street and Public Service Easement Vacation Order - Parkmerced Development Project]

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3 **Ordinance ordering the conditional vacation of portions of Higuera Avenue, Vidal Drive,**
4 **Arballo Drive, and Garces Drive (the “Street Vacation Area”), and certain San Francisco**
5 **Public Utilities Commission public service easements (the “Easement Vacation Area”),**
6 **all within the Parkmerced Development Project area, an approximately 152-acre site**
7 **located in the Lake Merced District in the southwest corner of San Francisco and**
8 **generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue, and Serrano Drive to**
9 **the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to**
10 **the south, and Lake Merced Boulevard to the west; reserving various easement rights**
11 **in favor of the City and third-party utilities, subject to specified conditions; adopting**
12 **findings under the California Environmental Quality Act; adopting findings that the**
13 **vacations are consistent with the Parkmerced Development Agreement, the General**
14 **Plan, and the eight priority policies of Planning Code, Section 101.1; and authorizing**
15 **actions by City officials in furtherance of this Ordinance, as specified herein.**

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. Environmental and Land Use Findings.

25 (a) On February 10, 2011, at a duly noticed public hearing, the Planning Commission
certified the Final Environmental Impact Report ("FEIR") for the Parkmerced Mixed-Use
Development Project (the "Project"), by Motion No. 18269, finding that the FEIR reflects the

1 independent judgment and analysis of the City and County of San Francisco (the "City"), is
2 adequate, accurate and objective, contains no significant revisions to the Draft EIR, and that
3 the content of the report and the procedures through which the FEIR was prepared, publicized
4 and reviewed comply with the provisions of the California Environmental Quality Act
5 (California Public Resources Code Sections 21000 et seq., "CEQA"), the CEQA Guidelines
6 (California Code of Regulations Title 14 Sections 15000 et seq.), and Chapter 31 of the San
7 Francisco Administrative Code ("Chapter 31").

8 (b) At the same hearing during which the Planning Commission certified the FEIR, the
9 Planning Commission by Motion No. 18270 adopted findings, as required by CEQA, regarding
10 the alternatives, mitigation measures, and significant environmental effects analyzed in the
11 FEIR, a statement of overriding considerations for approval of the Project, and a proposed
12 Mitigation Monitoring and Reporting Program ("MMRP") (collectively, "CEQA Findings").

13 (c) On May 24, 2011, at a duly noticed public hearing, the Board of Supervisors
14 reviewed and considered the FEIR on appeal. By Motion No. M11-83, the Board of
15 Supervisors upheld the Planning Commission's certification of the FEIR and found the FEIR to
16 be complete, adequate and objective and reflecting the independent judgment of the City and
17 in compliance with CEQA and the CEQA Guidelines. Said motion is on file with the Board of
18 Supervisors in File No. 110207 and is incorporated herein by reference.

19 (d) On June 7, 2011, at a duly noticed public hearing, the Board of Supervisors
20 considered the Project's approvals, which included amendments to the City's General Plan
21 (approved by Ordinance No. 92-11), Zoning Map (approved by Ordinance No. 91-11), and
22 Planning Code (approved by Ordinance No. 90-11), as well as a Development Agreement,
23 which was approved by Ordinance No. 89-11 (the "Development Agreement") (collectively,
24 the "Project Approvals"). Ordinance No. 89-11 is on file with the Clerk of the Board in File No.
25 110300 and is incorporated herein by reference. On June 14, 2011, the San Francisco Public

1 Utilities Commission (SFPUC) adopted SFPUC Commission Resolution No. 11-0091,
2 consenting to the Development Agreement.

3 (e) In approving the Project, including in its approval of the Development Agreement
4 by Ordinance No. 89-11, the Board of Supervisors adopted the Planning Commission's CEQA
5 Findings as its own and incorporated them by reference. In so doing, the Board of Supervisors
6 approved and endorsed the MMRP for implementation by other City departments and
7 recommended for adoption those mitigation measures that are enforceable by agencies other
8 than City departments. A copy of the CEQA Findings and the MMRP is on file with the Clerk
9 of the Board in File No. 110300 and is incorporated by reference.

10 (f) The Board of Supervisors finds that the actions proposed in this ordinance are
11 consistent with and within the scope of the Project analyzed in the FEIR and subject to the
12 CEQA Findings. The Board of Supervisors further finds that no substantial changes are
13 proposed in the Project and no substantial changes have occurred with respect to the
14 circumstances under which this Project will be undertaken that would cause new significant
15 environmental effects or a substantial increase in the severity of previously identified effects,
16 and there is no new information of substantial importance showing that the Project would have
17 any significant effects not discussed in the FEIR, that significant effects would be substantially
18 more severe, or that new or different mitigation measures or alternatives would substantially
19 reduce one or more significant effects of the Project. The Board affirms the Planning
20 Department's determination that an addendum to the FEIR is not required due to any changes
21 in the Project or the Project's circumstances.

22 (g) In a letter dated March 2, 2022 (the "Planning Letter"), the Planning Department
23 determined that the vacations proposed in this ordinance are consistent with the General Plan
24 and with the eight Priority Policies of Planning Code Section 101.1, comply with applicable
25 provisions of the Planning Code, and are consistent with the Project as defined in the

1 Development Agreement and the Project Approvals. A copy of said letter is on file with the
2 Clerk of the Board in File No. 220734 and is incorporated by reference herein. The Board of
3 Supervisors adopts as its own the consistency findings of the Planning Letter.

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5 Section 2. General Findings.

6 (a) California Streets and Highways Code Sections 8300 et seq., and San Francisco
7 Public Works Code Section 787(a) set forth the procedures that the City follows to vacate
8 public streets and public service easements.

9 (b) Section 6.1.1 of the Development Agreement requires that the City vacate portions
10 of streets at the locations generally shown in Exhibit J of the Development Agreement, as and
11 when needed in connection with the development of an approved Development Phase for the
12 Project. The Planning Director approved Development Phase 1 of the Project on June 3,
13 2015. Development Phase 1 is comprised of four Subphases (1A, 1B, 1C, and 1D). On
14 August 27, 2019, the Planning Director issued a letter approving certain requested
15 amendments and revisions to the Phase 1 application.

16 (c) Parkmerced Owner, LLC (together, with its successors and assigns, the “Project
17 Sponsor”) submitted two applications for tentative subdivision maps pursuant to the
18 requirements of the California Subdivision Map Act for Subphases 1C and 1D of the Project.
19 Those map applications are dated April 13, 2022 and October 29, 2021, respectively.
20 Tentative Map No. 10699 requested approval to subdivide Assessor’s Blocks 7333, 7333-A,
21 7333-B, 7334, and 7337 (Parkmerced Planning Blocks 3W and 4), and Tentative Map No.
22 10700 requested approval to subdivide Assessor’s Block 7331-253 (Parkmerced Planning
23 Block 21S) (collectively, the “Subphase 1C and 1D Tentative Maps”). Following the approval
24 by Public Works (“PW”) of these Subphase 1C and 1D Tentative Maps, the Project Sponsor
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1 will pursue the approval of a final subdivision map for each of the Subphase 1C and 1D
2 Tentative Maps (each, a “Final Map”).

3 (d) On July 26, 2022, the Board of Supervisors adopted Resolution No. 352-22 (the
4 “Resolution of Intention”), being a resolution declaring the intention of the Board of
5 Supervisors to conditionally vacate (1) portions of Higuera Avenue, Vidal Drive, Arballo Drive,
6 and Garces Drive (collectively, “Streets”) (the “Street Vacation Area”), and (2) certain SFPUC
7 public service easements within and outside of existing Streets (the “Easement Vacation
8 Area”). A copy of said Resolution is on file with the Clerk of the Board in File No. 220734, and
9 is incorporated herein by reference.

10 (e) The Street Vacation Area is shown in the Public Works SUR Map Nos. 2022-003,
11 2022-004, 2022-005, 2022-006, 2022-007, and 2022-008, and the Easement Vacation Area is
12 shown in Public Works SUR Map Nos. 2022-009, 2022-010, 2022-011, 2022-012, 2022-013,
13 2022-014, and 2022-015. Copies of said maps are on file with the Clerk of the Board in File
14 No. 220734 and are incorporated herein by reference.

15 (f) The Clerk of the Board of Supervisors transmitted to the Director of Public Works
16 (the “Director”) a certified copy of the Resolution of Intention, and the Director caused notice
17 of adoption of said Resolution to be posted in the manner required by law as demonstrated by
18 the affidavit of posting on file with the Clerk of the Board in File No. 220734.

19 (g) When the Resolution of Intention was considered as scheduled by the Board of
20 Supervisors at its regular meeting on September 20, 2022, the Board heard public testimony
21 regarding the vacation of the Street Vacation Area and Easement Vacation Area.

22 (h) The vacation of the Street Vacation Area and Easement Vacation Area is
23 necessary to implement Subphase 1C of the Project, to fulfill the objectives and requirements
24 of the Development Agreement, and to fulfill the objectives of the Parkmerced Special Use
25 District (Planning Code Section 249.64). The proposed vacations and other actions described

1 in this ordinance implement the Project contemplated by the Project Approvals, including the
2 construction of buildings and streets consistent with the Parkmerced Design Standards and
3 Guidelines, the Parkmerced Transportation Plan, and the Parkmerced Infrastructure Report,
4 all of which are incorporated by reference into the Development Agreement. Subphase 1D
5 requires no street or public service easement vacations.

6 (i) The City proposes to quitclaim its interest in the Street Vacation Area to the Project
7 Sponsor, consistent with Development Agreement Section 6.1.1; however, because the
8 Streets will remain in use until specified times, no portion of the Street Vacation Area shall be
9 vacated until all the following conditions are satisfied:

10 (1) The City reserves a public right of way easement to continue public street
11 and utility use until the Project Sponsor replaces the same in new public rights of way.

12 (2) The Project Sponsor shall provide an irrevocable offer of dedication to the
13 City in form substantially similar to that provided in Exhibit L of the Development Agreement
14 for all lands needed for construction of proposed improvements shown on the Street
15 Improvement Permit for Subphase 1C of the Project. The Project Sponsor shall make such
16 irrevocable offers of dedication prior to City approval of the Final Map or issuance of a Street
17 Improvement Permit for Subphase 1C of the Project, whichever is earlier. The offer of
18 dedication shall be subject to the reservation of an easement in favor of the Project Sponsor
19 for all domestic water utilities and recycled water systems, within the dedicated area, which
20 easement, as to the domestic water utilities, shall be extinguished upon completion of all
21 Development Phases of the Project and formal acceptance of the domestic water utilities by
22 the City, and, as to the recycled water systems, shall be extinguished upon completion of
23 Development Phase 1 and formal acceptance of the recycled water systems by the City, all
24 pursuant to the Development Agreement. The sum total of the square footage of the land
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1 proposed for dedication to the City shall be equal to or exceed the square footage of the
2 Street Vacation Area.

3 (3) The Project Sponsor shall provide PW with an acceptable Public
4 Improvement Agreement (“PIA”) pursuant to Section 1351 of the San Francisco Subdivision
5 Code and the California Subdivision Map Act for all improvements within the Final Map or
6 required for development of the area shown in the Final Map prior to approval of the Final
7 Map or issuance of a Street Improvement Permit for Subphase 1C of the Project, whichever is
8 earlier. Said PIA shall address security provisions and provide interim easements or licenses
9 via separate offer, such that the City can complete the improvements if the Project Sponsor
10 fails to do so.

11 (4) Where a future Development Phase of the Project (Development Phase 2
12 and onward) anticipates a future dedication of right of way adjacent to a street shown on a
13 tentative map as being partially improved, PW shall require the Project Sponsor, prior to
14 submittal of a Final Map mylar for such future phase (Development Phase 2 and onward), but
15 after acceptance and recordation of the quitclaim deeds for the Street Vacation Area
16 contemplated by this ordinance, to record a Notice of Restrictions on those strips of land
17 anticipated in such future phase to be dedicated for the ultimate street construction as agreed
18 upon in the Development Agreement, subject to the review and approval of the City Attorney.

19 (j) The City proposes to quitclaim its interest in the Easement Vacation Area to the
20 Project Sponsor where the Project Sponsor owns the underlying fee interest in the property;
21 however, because some of these easements will remain in use until specified times, certain
22 portions of the Easement Vacation Area shall not be vacated until all the following conditions
23 are satisfied:

24 (1) No portion of the Easement Vacation Area shall be vacated until the Project
25 Sponsor provides PW with an acceptable PIA pursuant to Section 1351 of the San Francisco

1 Subdivision Code and the California Subdivision Map Act for all improvements within the Final
2 Map or required for development of the area shown in the Final Map prior to approval of the
3 Final Map or issuance of a Street Improvement Permit for Subphase 1C of the Project. Said
4 PIA shall address security provisions and provide interim easements or licenses via separate
5 offer, such that the City can complete the improvements if the Subdivider fails to do so.

6 (2) The vacation of the Easement Vacation Area is subject to the reservation of
7 non-exclusive easements for the benefit of the SFPUC for any SFPUC utilities that are located
8 under, in, upon, or over any portion of the Easement Vacation Area in which the SFPUC's in-
9 place and functioning utilities are located, to the extent necessary to maintain, operate, repair,
10 and remove existing sewer or water pipes and other convenient structures, equipment and
11 fixtures for the operation of such utilities; provided, however, that such reserved non-exclusive
12 easements would be automatically extinguished when alternative replacement facilities are
13 completed to the satisfaction of the City Engineer and the Board of Supervisors accepts the
14 facilities or may be earlier terminated by quitclaim deed if the SFPUC General Manager
15 determines that there are no active facilities within the relevant easement area.

16 (3) In the event a non-exclusive easement held by the City to be vacated under
17 this ordinance has merged into the fee interest held by the City, such interest shall be deemed
18 to be automatically extinguished and conveyed at the time the fee interest is conveyed by the
19 Project Sponsor to the City or any other transferee pursuant to the Development Agreement.

20 (k) In a letter dated June 13, 2022, the Director of Property determined that: the
21 Development Agreement contemplates the vacation of the Street Vacation Area; Exhibit J of
22 the Development Agreement shows the general locations of the street vacations and
23 dedications required by the Project; Section 6.1.2 of the Development Agreement requires
24 that (1) all real property exchanged under the Development Agreement be valued on a square
25 foot basis, and shall be deemed equal in value per square foot, (2) if any real property

1 exchange under the Development Agreement results in a net loss of acreage for the City, then
2 the project sponsor must pay to the City the fair market value of the real property loss at the
3 time of transfer based on the then-current use of the property so transferred, and (3) the City
4 shall not be required to pay for any net gain in real property to the Project; provided, however,
5 such net gain can be applied against future real property transfers for purposes of determining
6 whether there has been a net loss as described above. In the letter, the Director of Property
7 also determined that: the proposed real property transfers associated with Subdivision Maps
8 10699 and 10700 result in a net gain in real property owned by the City; therefore, no
9 payment is owed by the Project for the vacation of the Street Vacation Area; and this net gain
10 should be credited against future transfers of real property for the Project. A copy of said letter
11 is on file with the Clerk of the Board in File No. 220734.

12 (l) On May 24, 2022, by SFPUC Resolution No. 22-0097, the SFPUC determined that
13 upon meeting the conditions specified in this ordinance, any easements located in the
14 Easement Vacation Area are surplus and unnecessary for the City's public utility purposes,
15 and that the value of any replacement infrastructure and of surrendering liability for any
16 existing facilities is a benefit to the SFPUC and serves as consideration for this vacation
17 action, and authorized the SFPUC General Manager or the Director of Property to quitclaim
18 these real property interests. A copy of this resolution is on file with the Clerk of the Board of
19 Supervisors in File No. 220734, and incorporated herein by reference.

20 (m) The Director of Public Works prepared PW Order No. 206691, dated June 15,
21 2022, in regard to the vacations and other actions contemplated in this ordinance and made
22 the following determinations: (1) upon satisfaction of the applicable condition or conditions
23 provided in Sections 2(i) and 2(j), the Street Vacation Area and Easement Vacation Area will
24 no longer be necessary for the City's present or prospective future public street, sidewalk, and
25 public service easement purposes as all existing physical public or private utilities located in

1 the Street Vacation Area and all existing physical public utilities within the Easement Vacation
2 Area will be relocated to the satisfaction of the City as part of the construction of the Project;
3 (2) with the exception of those rights noted in Sections 2(i) and 2(j), the public interest,
4 convenience, and necessity do not require that any easements or other rights be reserved for
5 any public or private utility facilities that are in place in the Street Vacation Area or the
6 Easement Vacation Area and that any rights based upon any such public or private utility
7 facilities shall be extinguished automatically upon the effectiveness of the vacation; (3) in
8 accordance with California Streets and Highways Code Section 892 and 8314, for those
9 portions of the Street Vacation Area and Easement Vacation Area to be conditionally vacated
10 as provided in Sections 2(i) and 2(j), upon satisfaction of the applicable condition or
11 conditions, the rights-of-way and parts thereof proposed for vacation will no longer be useful
12 as a nonmotorized transportation facility, as defined in California Streets and Highways Code
13 Section 887, because the Development Agreement requires the dedication and construction
14 of an extensive street, bicycle path, pedestrian path, park, and trail system that is more
15 extensive than the areas being vacated hereby and that is designed to integrate with existing
16 built streets in the adjacent neighborhoods; and (4) the Project Sponsor is the owner of all of
17 the private property adjacent to the Street Vacation Area and the proposed street vacations
18 do not deprive any private landowner of access to the built public street grid. A copy of the
19 PW Order is on file with the Clerk of the Board in File No. 220734 and is incorporated herein
20 by reference.

21 (n) In addition, in the PW Order, the Director recommended: (1) that the Board of
22 Supervisors adopt the legislation to vacate the Street Vacation Area and the Easement
23 Vacation Area; and (2) that the Board of Supervisors authorize the Mayor, Clerk of the Board,
24 Director of Property, County Surveyor, SFPUC General Manager, and Director of Public
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1 Works to take any and all actions which they or the City Attorney may deem necessary or
2 advisable in order to effectuate the purpose and intent of this ordinance.

3 (o) In addition, in the PW Order, the Director determined that the public interest,
4 convenience, and necessity require that the City reserve from the vacation of the Street
5 Vacation Area and Easement Vacation Area the rights described in Sections 2(i) and 2(j) .
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7 Section 3. Ordering Street and Public Service Easement Vacation.

8 (a) The Board of Supervisors approves the recommendations and findings in PW
9 Order No. 206691 and hereby vacates the Street Vacation Area, as shown in Public Works
10 SUR Map Nos. 2022-003, 2022-004, 2022-005, 2022-006, 2022-007, and 2022-008, and the
11 Easement Vacation Area as shown in Public Works SUR Map Nos. 2022-009, 2022-010,
12 2022-011, 2022-012, 2022-013, 2022-014, and 2022-015, pursuant to California Streets and
13 Highways Code Sections 8300 et seq. and San Francisco Public Works Code Section 787(a),
14 and upon satisfaction of the terms, conditions, and reservations as set forth in this ordinance,
15 including Section 2(i) and Section 2(j).

16 (b) The Board of Supervisors hereby finds that the Street Vacation Area and
17 Easement Vacation Area are unnecessary for present or prospective public use, subject to the
18 conditions described in this ordinance.

19 (c) The Board finds that the public interest, convenience, and necessity require that
20 the vacation be done as declared in this ordinance.

21 (d) Following recordation of this ordinance and upon satisfaction of the terms,
22 conditions, and reservations as set forth in this ordinance, the vacation shall be effective
23 without any further action by the Board, as to all of the Street Vacation Area upon recording of
24 the City's quitclaim deed in substantially the same form as the draft quitclaim deed, and as to
25 all of the Easement Vacation Area upon recording of the City's easement quitclaim deed and

1 interim easement agreement in substantially the same form as the draft easement quitclaim
2 and draft interim easement agreement. The draft quitclaim deed, draft easement quitclaim
3 deed, and draft interim easement agreement are on file with the Clerk of the Board in File No.
4 220734.

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6 Section 4. Execution of Quitclaim Deeds, Interim Easement Agreement, and
7 Delegation to Director of Property.

8 (a) The Board of Supervisors hereby authorizes the Director of Property to execute
9 City quitclaim deeds to the Project Sponsor for the Street Vacation Area upon satisfaction of
10 the conditions set forth in Section (2)(i) and for the applicable portions of the Easement
11 Vacation Area upon satisfaction of the conditions set forth in Section (2)(j).

12 (b) The Street Vacation Area quitclaim deeds executed pursuant to this Section 4 shall
13 include the reservation of a public right of way easement, maintaining public access and rights
14 for public utilities. The public right of way easement shall automatically extinguish when the
15 Director has issued notice of completion on replacement access and any public utilities
16 serving the affected area, or earlier on recordation of a quitclaim deed (or other notice of
17 termination) at the Director's discretion based on consultation with the affected City
18 departments and utility providers. The Easement Vacation Area quitclaim deeds executed
19 pursuant to this Section 4 shall be concurrent with the execution of the interim easement
20 agreement. The Board hereby delegates to the Director of Property, in cooperation with the
21 County Surveyor, the authority to determine precise locations of the boundaries of quitclaims
22 to be prepared and recorded pursuant to this ordinance so as to fully implement the intent of
23 this ordinance and to fully implement the Project.

1 Section 5. Official Acts in Connection with this Ordinance.

2 (a) The Mayor, Clerk of the Board, Director of Property, County Surveyor, SFPUC
3 General Manager, and Director of Public Works are hereby authorized and directed to take
4 any and all actions which they or the City Attorney may deem necessary or advisable in order
5 to effectuate the purpose and intent of this ordinance (including, without limitation, the filing of
6 this ordinance in the Official Records of the City and County of San Francisco, determination
7 of the precise locations of the boundaries of quitclaims to be prepared and recorded pursuant
8 to this ordinance, confirmation of satisfaction of any of the conditions to the effectiveness of
9 the vacation of any portion of the Street Vacation Area or Easement Vacation Area hereunder,
10 and confirmation of the reservation and acquisition of easements described in this ordinance
11 and execution and delivery of any evidence of same, which shall be conclusive as to the
12 satisfaction of such conditions upon signature by any such City official or the official's
13 designee).

14 (b) The Clerk of the Board of Supervisors is directed to transmit to the Office of the
15 Assessor-Recorder a certified copy of this ordinance, the legal description of the Vacation
16 Area, the Assessor's Parcel Number(s) or reserved Assessor's Parcel Number(s), and the
17 Public Works SUR Maps. Promptly upon the effective date of this ordinance, the County
18 Recorder shall record this ordinance, the legal description of the Vacation Area, and the
19 Public Works SUR Maps.

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1 Section 6. Effective Date.

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

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7 APPROVED AS TO FORM:
8 DAVID CHIU, City Attorney

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9 By: /s/ KRISTEN A. JENSEN
10 KRISTEN A. JENSEN
11 Deputy City Attorney

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