

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carla Short, Interim Director, Department of Public Works
Rich Hillis, Director, Planning Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: October 3, 2022

SUBJECT: LEGISLATION INTRODUCED

Greetings,

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on September 27, 2022.

File No. 221018

Ordinance accepting irrevocable offers of public infrastructure and real property associated (“Public Infrastructure”) with the 5M Project, a mixed use development located generally between Mission, Fifth, and Howard Streets, including the improvements described and depicted in Public Works Permit Nos. 18IE-0725 (“Phase 1”) and 18IE-0726 (“Phase 2”) and subsequent Instructional Bulletins; declaring City property and additional property as shown on official Public Works maps as open public right-of-way; dedicating the Phase 1 and Phase 2 Public Infrastructure to public use; designating said Public Infrastructure for street and roadway purposes; accepting the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes, subject to specified limitations; accepting a Public Works Order recommending various actions in regard to the public infrastructure improvements; establishing official public right-of-way widths; amending Ordinance No. 1061, entitled “Regulating the Width of Sidewalks,” to establish official sidewalk widths on the abovementioned street areas; authorizing official acts, as defined herein, in connection with this Ordinance; adopting findings under the California Environmental Quality Act; and making findings of consistency 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: Erica.Major@sfgov.org.

cc: David Steinberg, Department of Public Works
Ian Schneider, Department of Public Works
John Thomas, Department of Public Works
Lena Liu, Department of Public Works
Tina Tam, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Elizabeth Watty, Planning Department

1 [5M Project - Accepting the Phase 1 and Phase 2 Public Infrastructure]

2

3 **Ordinance accepting irrevocable offers of public infrastructure and real property**
 4 **associated (“Public Infrastructure”) with the 5M Project, a mixed use development**
 5 **located generally between Mission, Fifth, and Howard Streets, including the**
 6 **improvements described and depicted in Public Works Permit Nos. 18IE-0725 (“Phase**
 7 **1”) and 18IE-0726 (“Phase 2”) and subsequent Instructional Bulletins; declaring City**
 8 **property and additional property as shown on official Public Works maps as open**
 9 **public right-of-way; dedicating the Phase 1 and Phase 2 Public Infrastructure to public**
 10 **use; designating said Public Infrastructure for street and roadway purposes; accepting**
 11 **the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability**
 12 **purposes, subject to specified limitations; accepting a Public Works Order**
 13 **recommending various actions in regard to the public infrastructure improvements;**
 14 **establishing official public right-of-way widths; amending Ordinance No. 1061, entitled**
 15 **“Regulating the Width of Sidewalks,” to establish official sidewalk widths on the**
 16 **abovementioned street areas; authorizing official acts, as defined herein, in connection**
 17 **with this Ordinance; adopting findings under the California Environmental Quality Act;**
 18 **and making findings of consistency with the General Plan, and the eight priority**
 19 **policies of Planning Code, Section 101.1.**

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

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

25 Section 1. Background and Findings.

1 (a) This ordinance is related to the development of the 5M Project (the “Project”), a
2 mixed-use development located generally between Mission, Fifth and Howard Streets,
3 including office, residential, retail, cultural, educational, open space, parking, and related
4 uses. On December 2, 2015, the City and County of San Francisco (“City”) enacted
5 Ordinance No. 206-15, approving a Development Agreement authorizing the construction and
6 development of improvements; said ordinance is on file with the Clerk of the Board of
7 Supervisors in File No. 150788 and is incorporated herein by reference.

8 (b) The proposed acceptance of the public infrastructure improvements is within the
9 scope of the Final Environmental Impact Report (“FEIR”) for the Project prepared pursuant to
10 the California Environmental Quality Act (California Public Resources Code Sections 21000 *et*
11 *seq.*) (“CEQA”), certified by the Planning Commission on September 17, 2015, by Motion No.
12 19458. On September 17, 2015, by Motion No. 19459, the Planning Commission approved
13 CEQA findings, including adoption of a Mitigation Monitoring and Reporting Program
14 (“MMRP”), under Case No. 2011.0409ENV, for approval of the Project. Planning Commission
15 Motions 19458 and 19459 are on file with the Clerk of the Board of Supervisors in File No.
16 150787, and are incorporated herein by reference.

17 (c) Pursuant to the CEQA Guidelines (California Code of Regulations Title 14,
18 Sections 15000 *et seq.*), including Section 15162, the actions contemplated herein are
19 consistent with, and within the scope of, the Project analyzed in the FEIR, and (1) no
20 substantial changes are proposed in the Project and no substantial changes have occurred
21 with respect to the circumstances under which this Project will be undertaken that would
22 require major revisions to the FEIR due to the involvement of any new significant
23 environmental effects or a substantial increase in the severity of previously identified effects
24 and (2) no new information of substantial importance that was not known and could not have
25 been known with the exercise of reasonable diligence at the time the FEIR was certified as

1 complete shows that the Project will have any new significant effects not analyzed in the
2 FEIR, or a substantial increase in the severity of any effect previously examined, or that new
3 mitigation measures or alternatives previously found not to be feasible would in fact be
4 feasible and would substantially reduce one or more significant effects of the Project, or that
5 mitigation measures or alternatives which are considerably different from those analyzed in
6 the FEIR would substantially reduce one or more significant effects on the environment. The
7 Board of Supervisors adopts the Planning Commission CEQA findings as its own.

8 (d) In a letter dated September 15, 2022 (“Planning Department Letter”), the Planning
9 Department affirmed that acceptance of the Phase 1 and Phase 2 Public Infrastructure, which
10 is required as a condition of Project approval, and other actions set forth in this ordinance are,
11 on balance, in conformance with the General Plan and the eight priority policies of Planning
12 Code Section 101.1. The Board of Supervisors adopts as its own the General Plan and
13 Planning Code Section 101.1 findings. A copy of the Planning Department Letter is on file
14 with the Clerk of the Board of Supervisors in File No. 221018, and is incorporated herein by
15 reference.

16 (e) As a condition of Final Map Nos. 8731 and 10101, FC 5M H1 EXCHANGE, LLC, a
17 Delaware limited liability company, and FC 5M M2 EXCHANGE, LLC, a Delaware limited
18 liability company (together, “Subdivider”) have irrevocably offered the Phase 1 and Phase 2
19 Public Infrastructure and real property to the City, as set forth in: the 5M Project - Phase 1
20 Irrevocable Offer of Improvements, dated May 6, 2019; 5M Project - Phase 2 Irrevocable Offer
21 of Improvements, dated November 13, 2019; Offer of Dedication - Lot A, dated May 6, 2019;
22 Offer of Dedication - Lot B, dated May 6, 2019; and Offer of Dedication - Lot C, dated May 6,
23 2019 (collectively, “Subdivider Offer”). Copies of the offers of improvements and relevant
24 grant deeds for real property are on file with the Clerk of the Board of Supervisors in Board
25 File Nos. 190607 and 191244.

1 (f) In Public Works Order No. 207142, dated September 23, 2022, including Map No.
2 A-17-221, and Drawing No. Q-20-1141 (collectively, "PW Order No. 207142"), the City
3 Engineer certified and the Public Works Director (the "PW Director") recommended that the
4 Board find that: (1) Public Works inspected the Phase 1 Public Infrastructure and determined
5 it to be complete as of May 31, 2022, and inspected the Phase 2 Public Infrastructure and
6 determined it to be complete as of September 23, 2022; (2) Public Works found that the
7 Phase 1 and Phase 2 Public Infrastructure has been constructed in accordance with the Plans
8 and Specifications and all City codes, regulations, and standards governing the Phase 1 and
9 Phase 2 Public Infrastructure; and (3) Public Works found that the Phase 1 and Phase 2
10 Public Infrastructure is ready for its intended use. Copies of PW Order No. 207142, including
11 Map No. A-17-221 and Drawing No. Q-20-1141, are on file with the Clerk of the Board of
12 Supervisors in File No. 221018 and are incorporated herein by reference.

13 (g) The PW Director and City Engineer also recommended that the Board of
14 Supervisors declare the Phase 1 and Phase 2 Public Infrastructure and associated property
15 as shown on official Public Works maps as open public right-of-way; dedicate the Phase 1
16 and Phase 2 Public Infrastructure to public use; designate such public infrastructure for street
17 and roadway purposes; and accept it for City maintenance and liability purposes, subject to
18 conditions.

19 (h) Specifically, the PW Director and City Engineer recommended that acceptance of
20 the Phase 1 and Phase 2 Public Infrastructure for maintenance and liability purposes be
21 subject to the following conditions: (1) the portions of streets being accepted for street and
22 roadway purposes are from back of sidewalk to back of sidewalk, unless specified otherwise
23 or as shown on the Plans and Specifications for the Phase 1 and Phase 2 Public
24 Infrastructure; (2) acceptance of the Phase 1 and Phase 2 Public Infrastructure for City
25 maintenance and liability purposes is from back of curb to back of curb, unless specified

1 otherwise, and sidewalk maintenance is the responsibility of the fronting property owners in
2 accordance with the Public Works Code; (3) any encroachments, whether permitted or not,
3 are excluded from acceptance for maintenance and liability purposes; (4) the acceptance of
4 the streets does not obviate, amend, alter, or in any way affect existing maintenance
5 agreements between the City and parties to such agreements; (5) Subdivider's conditional
6 assignment of all warranties and guaranties to the City related to the construction of the
7 Phase 1 and Phase 2 Public Infrastructure and its warranty obligations under Street
8 Improvement Permit Nos. 18IE-0725 and 18IE-0726, approved March 18, 2021, as modified
9 by Instructional Bulletins #1 and #2, and (6) any acceptance being expressly conditioned on
10 Subdivider obtaining an encroachment permit or other authorization from the City to maintain
11 encroachments in the public right-of-way that are the applicant's responsibility.

12 (i) In PW Order No. 207142, the PW Director and City and County Surveyor also
13 recommended establishment of public right-of-way widths and sidewalk widths on Mary,
14 Natoma, Minna, Fifth, and Howard Streets in accordance with Map No. A-17-221 and Drawing
15 No. Q-20-1141.

16 (j) In Resolution No. 359-21, the Board of Supervisors approved the issuance of a
17 Major Encroachment Permit to FC 5M M2 Exchange LLC to construct and maintain: the
18 pedestrian-only alley/paseo on Mary Street between Mission and Minna Streets fronting 434
19 Minna Street (Assessor's Parcel Block No. 3725, Lot No. 132); the private underground
20 telecommunications conduit connecting 434 Minna Street and 415 Natoma Street below
21 portions of Minna, Natoma, and Mary Streets; and the private non-potable water lines
22 connecting to 434 Minna Street and 415 Natoma Street below portions of Minna and Natoma
23 Streets. A copy of the Major Encroachment Permit is on file with the Clerk of the Board of
24 Supervisors in File No. 210688.

25

1 Section 2. Adoptions and Approvals.

2 (a) The Board of Supervisors adopts as its own the CEQA findings and the General
3 Plan and Planning Code Section 101.1 consistency findings in the Planning Department
4 Letter, as referenced in Section 1(b)-(d) of this Ordinance, in connection with the acceptance
5 of the Phase 1 and Phase 2 Public Infrastructure and other actions specified in this
6 Ordinance.

7 (b) The Board of Supervisors has reviewed and approves PW Order No. 207142,
8 including the City Engineer’s certification and the PW Director’s recommendation, as
9 referenced in Section 1(f)-(i) of this ordinance, concerning the acceptance of Subdivider’s
10 Offer of Phase 1 and Phase 2 Public Infrastructure, and other actions set forth in the Public
11 Works Order.

12
13 Section 3. Acceptance of Public Infrastructure and Assumption of Maintenance and
14 Liability Responsibilities.

15 (a) Pursuant to California Streets and Highways Code Section 1806 and San
16 Francisco Administrative Code Sections 1.51 *et seq.*, and PW Order No. 207142, the Board of
17 Supervisors hereby accepts and dedicates the Phase 1 and Phase 2 Public Infrastructure for
18 public use, as described in this ordinance.

19 (b) Subdivider’s Offer also includes real property for right-of-way purposes underlying
20 Mary, Minna, and Natoma Streets, which is evidenced by grant deeds for the property.
21 Copies of the relevant grant deeds are on file with the Clerk of the Board of Supervisors in
22 Board File No. 190607. The Board of Supervisors hereby accepts the grant deeds and
23 authorizes the Director of Real Property to execute and record said deeds.

24 (c) The Board of Supervisors hereby approves Map No. A-17-221, and declares the
25 areas shown hatched on said map as open public right-of-way, and designates these areas

1 for street and roadway purposes. Map No. A-17-221 covers the following streets and street
2 widenings: Mary, Natoma, and Minna Streets.

3 (d) The Board of Supervisors hereby accepts the Phase 1 and Phase 2 Public
4 Infrastructure for City maintenance and liability purposes, subject to the following conditions:
5 (1) the portions of streets being accepted for street and roadway purposes are from back of
6 sidewalk to back of sidewalk, unless specified otherwise or as shown on the Plans and
7 Specifications for the Phase 1 and Phase 2 Public Infrastructure; (2) acceptance of the Phase
8 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes is from back of
9 curb to back of curb, unless specified otherwise, and sidewalk maintenance is the
10 responsibility of adjacent property owners in accordance with the Public Works Code; (3) any
11 encroachments, whether permitted or not, are excluded from acceptance for maintenance and
12 liability purposes; and (4) the acceptance of the streets does not obviate, amend, alter, or in
13 any way affect existing maintenance agreements between the City and parties to such
14 agreements.

15 (e) The Board of Supervisors hereby acknowledges Subdivider's conditional
16 assignment of all warranties and guaranties to the City related to the construction of the
17 Phase 1 and Phase 2 Public Infrastructure. Acceptance of the Phase 1 and Phase 2 Public
18 Infrastructure is also subject to Subdivider's warranty obligations under Street Improvement
19 Permit Nos. 18IE-0725 and 18IE-0726, as modified by Instructional Bulletins #1 and #2 and
20 Subdivider's warranty obligations under Section 7(a) of the Phase 1 and Phase 2 Public
21 Improvement Agreements.

22 (f) The Board of Supervisors hereby acknowledges issuance of a Major Encroachment
23 Permit in Board of Supervisors File No. 210688, under which Subdivider will maintain: the
24 pedestrian-only alley/paseo on Mary Street between Mission and Minna Streets fronting 434
25 Minna Street (Assessor's Parcel Block No. 3725, Lot No. 132); the private underground

1 telecommunications conduit connecting 434 Minna Street and 415 Natoma Street below
2 portions of Minna, Natoma, and Mary Streets; and the private non-potable water lines
3 connecting to 434 Minna Street and 415 Natoma Street below portions of Minna and Natoma
4 Streets.

5
6 Section 4. Establishment of Public Right-of-Way Widths and Sidewalk Widths.

7 (a) In accordance with PW Order No. 207142, the Board of Supervisors hereby
8 establishes the official public right-of-way widths for Mary, Natoma, and Minna streets, as
9 shown on Map No. A-17-221.

10 (b) In accordance with PW Order No. 207142, Board of Supervisors Ordinance No.
11 1061, entitled "Regulating the Width of Sidewalks," a copy of which is in the Clerk of the Board
12 of Supervisors Book of General Ordinances, in effect May 11, 1910, is hereby amended by
13 adding thereto a new section, to read as follows:

14 Section 1640. The sidewalk widths on Howard, Fifth, Mary, and Natoma streets shall be
15 modified as shown on the Public Works Drawing No. Q-20-1141.

16 (c) The sidewalk widths established pursuant to subsection (b), above, for Mary,
17 Natoma, Fifth, and Howard streets do not obviate, amend, alter, or in any other way affect the
18 maintenance obligations of the adjacent property owners as set forth in the Public Works
19 Code.

20 (d) The Board of Supervisors hereby directs Public Works to revise the Official Public
21 Right-of-Way and Sidewalk Width maps in accordance with this ordinance.

22
23 Section 5. Authorization for Implementation. The Mayor, Clerk of the Board of
24 Supervisors, Director of Real Estate, and PW Director are hereby authorized and directed to
25 take any and all actions which they or the City Attorney may deem necessary or advisable in

1 order to effectuate the purpose and intent of this ordinance, including, but not limited to, the
2 filing of the ordinance and Map No. A-17-221 and Drawing No. Q-20-1141 in the Official
3 Records of the City and County of San Francisco.

4
5 Section 6. Effective Date. This Ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the Ordinance, the Mayor returns the
7 Ordinance unsigned or does not sign the Ordinance within ten days of receiving it, or the
8 Board of Supervisors overrides the Mayor's veto of the Ordinance.

9
10 APPROVED AS TO FORM:
11 DAVID CHIU, City Attorney

12 By: /s/ Austin Yang
13 AUSTIN M. YANG
14 Deputy City Attorney

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LEGISLATIVE DIGEST

[5M Project - Accepting the Phase 1 and Phase 2 Public Infrastructure]

Ordinance accepting irrevocable offers of public infrastructure and real property associated (“Public Infrastructure”) with the 5M Project, a mixed use development located generally between Mission, Fifth, and Howard Streets, including the improvements described and depicted in Public Works Permit Nos. 18IE-0725 (“Phase 1”) and 18IE-0726 (“Phase 2”) and subsequent Instructional Bulletins; declaring City property and additional property as shown on official Public Works maps as open public right-of-way; dedicating the Phase 1 and Phase 2 Public Infrastructure to public use; designating said Public Infrastructure for street and roadway purposes; accepting the Phase 1 and Phase 2 Public Infrastructure for City maintenance and liability purposes, subject to specified limitations; accepting a Public Works Order recommending various actions in regard to the public infrastructure improvements; establishing official public right-of-way widths; amending Ordinance No. 1061 entitled “Regulating the Width of Sidewalks” to establish official sidewalk width on the abovementioned street areas; authorizing official acts, as defined herein, in connection with this ordinance; adopting findings under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1

Existing Law

The City enacted Ordinance No. 206-15 on December 2, 2015, which approved the Development Agreement for the 5M mixed-use development located generally between Mission, Fifth and Howard Streets, including office, residential, retail, cultural, educational, open space, parking, and related uses. Pursuant to the Development Agreement, the project developer is required to construct specified public infrastructure and dedicate said infrastructure to the City. Upon dedication, the City would initiate the local and State law procedures to establish the areas as open public right-of-way, accept the areas for City maintenance and liability purposes, subject to certain limitations, and take related actions. In addition, Board of Supervisors’ Ordinance No. 1061 established the official sidewalk widths throughout San Francisco. Ordinance No. 1061 is uncodified, but can be located in the Clerk of the Board of Supervisors Book of General Ordinances, in effect May 11, 1910, which is on file with the Clerk of the Board of Supervisors.

Amendments to Current Law

This legislation would accept offers of dedication for public infrastructure and real property required as part of the 5M project; declare said right-of-way open to the public; dedicate the infrastructure to public use and designate it for street and roadway purposes; accept the infrastructure for maintenance and liability purposes, subject to limitations. The ordinance also

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would establish official right-of-way as shown on Map A-17-221; establish official sidewalk widths as shown on Drawing Q-20-1141; and amend Board of Supervisors Ordinance No. 1061. This ordinance would make certain findings related to the legislation, including environmental findings and findings that the legislation is consistent with the approved project, the General Plan, and the priority policy findings of the Planning Code Section 101.1.

Background Information

This legislation would help facilitate the development of the 5M project.

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