

1 [Summary Vacation - Hunt Street (SFMOMA Expansion/Fire Station No. 1 Relocation and
2 Housing Project)]

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4 **Ordinance ordering the summary vacation of Hunt Street as part of the San Francisco**
5 **Museum of Modern Art (SFMOMA) Expansion/Fire Station No. 1 Relocation and**
6 **Housing Project; adopting findings pursuant to the California Streets and Highways**
7 **Code Sections 8330 et seq.; adopting findings pursuant to the California Environmental**
8 **Quality Act; adopting findings that the vacation and sale are in conformity with the**
9 **City's General Plan and Eight Priority Policies of City Planning Code Section 101.1; and**
10 **authorizing official acts in furtherance of this Ordinance.**

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are ~~*strikethrough italics Times New Roman*~~.
13 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings. The Board of Supervisors of the City and County of San
16 Francisco hereby finds, determines, and declares as follows:

17 A. Pursuant to Ordinance No. 218-10, this Board approved the City's execution and
18 delivery of the Conditional Land Disposition and Acquisition Agreement dated as of October
19 15, 2010 (the "Agreement") between the City and The San Francisco Museum of Modern Art,
20 a California non-profit corporation, and its affiliate New Florian, LLC, a California limited
21 liability company (collectively "Museum").

22 B. The Agreement provided the transactional framework for the transfer by the City
23 to Museum of (i) 676 Howard Street (Block 3722, Lot 028), the location of a fire station known
24 as "Fire Station No. 1," and (ii) an adjoining section of the Hunt Street public right-of-way, also
25 located within Block 3722 between 3rd Street and New Montgomery Street, in San Francisco,

1 California ("Hunt Street") (which, together with all of City's interest in any rights, privileges,
2 and incidental or appurtenant easements, shall be referred to in this Ordinance as the "City
3 Property") in exchange for the transfer to the City by Museum of (1) the 9,000-square-foot
4 northern portion (the "Replacement Property") of Museum's parcel of real property located at
5 935 Folsom Street (Block 3753, Lot 140) in San Francisco, (2) a new fire station to be
6 constructed by Museum, at Museum's sole cost and expense (the "Replacement Fire
7 Station"), on the Replacement Property, and (3) a parking easement over an approximately
8 1,800-square-foot adjacent portion of the Museum's adjacent 5,400-square-foot parcel (the
9 "Parking Easement"). For purposes of this Ordinance, the Replacement Fire Station,
10 Replacement Property, and the Parking Easement shall be referred to in this Ordinance as
11 the "Museum Transfer Property." The exchange transaction contemplated by the Agreement
12 is subject to the satisfaction of express conditions, including the issuance of various
13 discretionary approvals and the completion of environmental review under the California
14 Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 *et*
15 *seq.*), the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*),
16 and Chapter 31 of the San Francisco Administrative Code (collectively, "Environmental
17 Review"). The terms and conditions of such proposed exchange as contemplated by the
18 Agreement shall be referred to in this Ordinance as the "Exchange Transaction."

19 C. The Department of Public Works has advised the City's Department of Real
20 Estate that there are no in-place public utility facilities that are in use that would be affected by
21 vacation of Hunt Street.

22 D. Section 8334 of the California Streets and Highways Code provides that the
23 legislative body of a local agency may summarily vacate an excess right-of-way of a street,
24 highway or public easement under certain circumstances. In this instance, Hunt Street
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1 constitutes a short, discontinuous, approximately 115-foot-long, public right-of-way that runs
2 less than a city block in length and is not necessary for street purposes as all properties that it
3 abuts are served by other roadways. Further, no public service easements exist within this
4 right-of-way.

5 E. Pursuant to Resolution No. 198-92, the Board authorized the acceptance of that
6 certain Grant of Easement and Agreement between the Museum and City, dated March 25,
7 1992, by which Museum granted City a public street easement over a portion of Museum's
8 property at 151 Third Street (the "151 Third Street Easement"). A copy of Resolution No. 198-
9 92 is on file with the Clerk of the Board of Supervisors in File No. 82-92-2 and is incorporated
10 herein by reference. The Board understands that the 151 Third Street Easement terminates
11 by its express terms upon any vacation by City of Hunt Street, and that this Ordinance, by
12 causing the vacation of the Vacated Property, will also terminate the 151 Third Street
13 Easement.

14 F. On November 10, 2011, the Planning Commission conducted a duly noticed
15 public hearing on the proposed San Francisco Museum of Modern Art Expansion / Fire
16 Station Relocation and Housing Project (Project), including the proposed vacation of Hunt
17 Street contemplated in connection with the Exchange Transaction. The Planning Commission
18 found that the proposed vacation of Hunt Street was, on balance, consistent with the City's
19 General Plan, as it is proposed for amendment, and with planning Code Section 101.1(b). A
20 copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 111240
21 and is incorporated herein by reference.

22 G. The Board finds that the proposed vacation of Hunt Street is, on balance,
23 consistent with the General Plan, as proposed to be amended, and with the Priority Policies of
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1 Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.
2 18488, and the Board hereby incorporates such reasons herein by reference.

3 H. In a letter dated October 25, 2011, the Director of the Department of Public
4 Works ("DPW Director") stated that (i) the Department of Public Works received and
5 circulated an application for the vacation of the portion of Hunt Street to be vacated
6 hereunder, as shown in DPW SUR Map No. 2001-001 (the "Vacated Property"), (ii) no utility
7 company objected to the proposed vacation, and (iii) and recommended that the Director of
8 Real Estate proceed with the proposed vacation. A copy of the DPW letter and a copy of
9 DPW SUR Map No. 2001-001 are on file with the Clerk of the Board of Supervisors in File No.
10 111213 and is incorporated herein by reference.

11 I. In DPW Order No. 179,799, dated December 1, 2011, the Director of the
12 Department of Public Works determined: (i) that the Vacated Property is unnecessary for the
13 City's present or prospective public street purposes and (ii) there are no physical public and
14 private utilities affected by the vacation of the Vacated Property. A copy of the DPW Order is
15 on file with the Clerk of the Board of Supervisors in File No. 111213 and is incorporated herein
16 by reference.

17 J. The DPW Director also recommended that the public interest, convenience, and
18 necessity require that, except as specifically provided above, no other easements or other
19 rights should be reserved by City for any public or private utilities or facilities that are in place
20 in such Vacated Property and that any rights based upon any such public or private utilities or
21 facilities should be extinguished.

22 K. Pursuant to the Streets and Highways Code Section 892, the DPW Director also
23 found that the Vacated Property is unnecessary for non-motorized transportation as there are
24 multiple streets surrounding that Vacated Property that remain available for such
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1 transportation and those members of the public availing themselves of non-motorized
2 transportation will not be inconvenienced by the proposed street vacation..

3 L. The Board understands that, pursuant to DPW regulations, Museum's agents
4 have made good faith efforts to obtain the consent of all owners of property adjacent to the
5 Vacated Property to the proposed vacation of the Vacated Property and, despite such efforts,
6 not all such owners have yet consented to such proposed vacation. The Board hereby finds
7 that, in consideration of all relevant factors, the consent of all owners of property adjacent to
8 the Vacated Property to the proposed vacation of the Vacated Property is unnecessary.

9 M. California Environmental Quality Act. At its hearing on November 10, 2011, and
10 prior to recommending the proposed vacation of Hunt Street for approval, the Planning
11 Commission certified a Final Environmental Impact Report (FEIR) for the Project pursuant to
12 the California Environmental Quality Act (California Public Resources Code Section 21000 *et*
13 *seq.*), the CEQA Guidelines (14 Cal. Code Reg. Section 15000 *et seq.*) and Chapter 31 of the
14 Administrative Code. In accordance with the actions contemplated herein, this Board has
15 reviewed the FEIR and concurs with its conclusions, affirms the Planning Commission's
16 certification of the FEIR, and finds that the actions contemplated herein are within the scope
17 of the Project described and analyzed in the FEIR. The Board hereby adopts and incorporates
18 by reference as though fully set forth herein the Commission's CEQA approval findings,
19 including a statement of overriding considerations, adopted by the Planning Commission on
20 November 10, 2011. This Board also adopts and incorporates by reference as though fully set
21 forth herein the Project's Mitigation Monitoring and Reporting Program (MMRP). Said findings
22 and MMRP are on file with the Clerk of the Board of Supervisors in File No. 111240.

23 N. Pursuant to the Streets and Highways Code Section 8334, the Board hereby
24 finds and determines that the Vacated Property, as shown in DPW SUR Map No. 2011-001 is
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1 an excess street, and therefore is unneeded for vehicular or pedestrian traffic. A copy of such
2 map is on file with the Clerk of the Board of Supervisors in File No. 111213 and is
3 incorporated herein by reference. Provided that the Vacated Property is transferred to
4 Museum and thereafter developed as contemplated by and set forth in the Agreement, the
5 public convenience and necessity require that no easements or other rights be reserved for
6 any public utility facilities and that any rights based upon any such public utility facilities shall
7 be extinguished automatically upon the effectiveness of the vacation hereunder.

8 Section 2. Pursuant to California Streets and Highways Code Sections 8330 et seq.
9 (Public Streets, Highways, and Service Easement Vacation Law, Summary Vacation) and
10 Section 787 of the San Francisco Public Works Code, the Board orders the summary vacation
11 of the Vacated Property immediately prior to the transfer of the Vacated Property to Museum.
12 The Clerk of the Board of Supervisors and the Director of Property shall be authorized, and
13 the Clerk shall be directed, to record or cause to be recorded in the Official Records of the
14 City and County of San Francisco a certified copy of this Ordinance ordering such vacation as
15 provided in Section 8335(a) of the California Streets and Highways Code at the Closing (as
16 defined in the Agreement), and thereupon such vacation shall be effective without any further
17 action by the Board of Supervisors. Immediately following the recordation of this Ordinance,
18 the Director of Property is authorized to record a deed conveying the Vacated Property to
19 Museum or its designee. In the event that the closing contemplated by the Agreement does
20 not occur for any reason, then this Ordinance shall be null and void and shall not be recorded.

21 Section 3. The Clerk of the Board, Director of Property, and Director of Public Works
22 are hereby authorized and directed to take any and all actions that they or the City Attorney
23 may deem necessary or advisable in order to effectuate the purpose and intent of this
24 Ordinance.

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1 Section 4. Effective Date. This ordinance shall become effective 30 days from the
2 date of passage.

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RECOMMENDED:

JOHN UPDIKE
Interim Director of Property

MOHAMMED NURU
Interim Director of Public Works

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

By: _____
Richard Handel
Deputy City Attorney