

1 [Summary Vacation of Public Service Easement; Approval of Sale of Easement Interest -
2 1407-1435 Market Street]

3 **Ordinance ordering the summary vacation of public service easement and approving**
4 **sale for \$77,000 of City's interest in vacated easement over property located at 1407-**
5 **1435 Market Street; adopting findings pursuant to the California Streets and Highways**
6 **Code Sections 8330 et seq.; adopting findings pursuant to the California Environmental**
7 **Quality Act; adopting findings that the vacation and sale are in conformity with the**
8 **City's General Plan and Eight Priority Policies of City Planning Code Section 101.1; and**
9 **authorizing official acts in furtherance of this Ordinance.**

10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 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
16 San Francisco hereby finds, determines, and declares as follows:

17 A. The City and Tenth and Market LLC , a California limited liability company,
18 ("T&M") have negotiated an Agreement for Sale of Real Property (the "Purchase and Sale
19 Agreement") under which the City agrees to sell to T&M City's interest in a public service
20 easement that commences at the western end of Jessie Street and continues on and under
21 an adjacent parcel of real property owned by T&M located at 1407-1435 Market Street
22 (Lot 041 in Assessor's Block 3507) in the City and County of San Francisco (the "Property").
23 Based on a recent appraisal of the Property, the Director of Property has determined that the
24 \$77,000 purchase price to be paid by T&M is reasonably equivalent to the Property's fair
25 market value. As set forth in the Purchase and Sale Agreement, any such vacation by the
City of such public service easement and any consequent sale are subject to approval by the

1 Board of Supervisors at its sole discretion. The Purchase and Sale Agreement and other real
2 estate transactional documents are on file with the Clerk of the Board of Supervisors in
3 File No. 120928 and are incorporated herein by reference.

4 B. The Department of Public Works has advised the City's Real Estate Division that
5 there are no in-place public utility facilities that are in use that would be affected by vacation
6 because the only utility within the easement to be vacated is an unused section of sewer line
7 that will be purchased by T&M pursuant to the Purchase and Sale Agreement.

8 C. Section 8334 of the California Streets and Highways Code provides that the
9 legislative body of a local agency may summarily vacate an excess right-of-way of a street,
10 highway, or public easement under certain circumstances. In particular, Section 8334
11 provides that the legislative body of a local agency may summarily vacate a street when a
12 portion of a street lies within the property under one ownership and does not continue through
13 such ownership or end touching property of another. In this instance, the portion of the public
14 service easement to be vacated is located wholly on and under the Property, as such
15 easement extends from the western edge of Jessie Street that runs westerly from 10th Street
16 and terminates at the eastern edge of the Property. In addition, Section 8334.5 of the
17 California Streets and Highways Code allows for a summary vacation only if there are no
18 in-place utility facilities that are in use and would be affected by the vacation.

19 D. The residential and ground floor retail project currently under construction by
20 T&M on the Property ("T&M's Project") was approved by the City Planning Commission under
21 City Planning Case No. 2006.0584KXCV. A Final Environmental Impact Report (the "Final
22 EIR") for the Tenth/Market/Mission Streets Mixed Use Project was certified by the City
23 Planning Commission by Motion No. 16871, adopted October 14, 2004 under the original
24 Case No. 2003.0262 EIXCVRSZT, and an Addendum was thereafter prepared on March 8,
25

1 2007 in connection with Case No. 2006.0584. Subsequently, additional addenda were
2 prepared in 2009 and 2012 to evaluate the affordable housing project proposed on an
3 adjacent site which originally was part of an overall site development analyzed in the Final
4 EIR but which is not part of T&M's project. These addenda are contained in and available for
5 review in Planning Department Case File Nos. 2003.0262E and 2011.1043E, respectively.
6 The Final EIR and Addendum are collectively referred to herein as the "FEIR".

7 E. The vacation and sale of the public service easement was not contemplated by
8 T&M or the City when T&M's Project was approved for construction and T&M's request for the
9 vacation and sale of the easement has arisen during implementation of the project.

10 F. The Planning Commission adopted findings pursuant to the California
11 Environmental Quality Act in Motion No. 16880, adopted October 28, 2004, as subsequently
12 modified in Motion Nos. 17414 and 17415, adopted April 5, 2007, which findings are referred
13 to herein as the "CEQA Findings." Mitigation measures were adopted as conditions of
14 approval. Copies of the FEIR and Planning Commission Motion Nos. 16871, 16880,
15 17414 and 17415 are on file with the Clerk of the Board of Supervisors in File No. 120928,
16 and the CEQA Findings are incorporated herein by reference.

17 G. The Director of Planning, by letter dated November 14, 2011 (amended
18 February 13, 2012) (the "General Plan Consistency Determination"), Case No. 2011.1261R,
19 found that the easement vacation is, on balance, in conformance with the City's General Plan
20 and is consistent with the Eight Priority Planning Policies of Planning Code Section 101.1.
21 The General Plan Consistency Determination is on file with the Clerk of the Board of
22 Supervisors in File No. 120928.

23 H. In DPW Order No. 179,775, dated November 17, 2011 the Director of Public
24 Works determined that a summary vacation is appropriate in this instance and recommended
25

1 such action to the Board of Supervisors. This Order is on file with the Clerk of the Board of
2 Supervisors under File No. 120928 and is incorporated herein by reference.

3 I. The San Francisco Public Utilities Commission (the "SFPUC") by Resolution
4 No. 12-0132 adopted July 24, 2012 recommended approval of the sale and vacation of the
5 portion of the public service easement, and authorized the General Manager of the SFPUC,
6 subject to the Board approval of vacation and sale of such easement, to execute an
7 agreement for the sale and purchase of such easement with T&M.

8 J. Pursuant to the Streets and Highways Code Section 892, the Board hereby finds
9 and determines that the portion of the public service easement to be vacated hereunder, as
10 shown in DPW SUR Map No. 2011-002, (the "Vacated Property") runs from the end of a dead
11 end street, is wholly located on and under private property, and therefore has no use for a
12 nonmotorized transportation facility. A copy of such map is on file with the Clerk of the Board
13 of Supervisors in File No. 120928 and is incorporated herein by reference.

14 Section 2. The public conveyance and necessity require that no easements or other
15 rights be reserved for any public utility facilities and that any rights based upon any such
16 public utility facilities shall be extinguished automatically upon the effectiveness of the
17 vacation hereunder.

18 Section 3. The Board finds and determines that the Vacated Property is
19 unnecessary for present or prospective public use and that the public interest and
20 convenience require that the vacation be done as declared in this Ordinance, provided that
21 the Vacated Property is sold as contemplated by and set forth in the Purchase and Sale
22 Agreement and thereafter developed.

23 Section 4. The Board of Supervisors hereby finds that the summary vacation and
24 sale of the Vacated Property is, on balance, in conformity with the General Plan and
25

1 consistent with the Eight Priority Policies of Planning Code Section 101.1 for the reasons set
2 forth in the General Plan Consistency Determination.

3 Section 5. The Board of Supervisors has reviewed and considered the FEIR and the
4 record as a whole, and finds that the FEIR is adequate for its use as the decision-making
5 body for the actions taken herein. The Board finds that the easement vacation and transfer of
6 interest in the easement to Buyer is a non physical activity and does not represent a change
7 in the Project that would require additional environmental review. There is no change in the
8 circumstances under which the Project is being undertaken that would require major revisions
9 to the FEIR due to the involvement of new significant environmental impacts or an increase in
10 the severity of previously identified significant impacts, and there is no new information of
11 substantial importance that would change the conclusions set forth in the FEIR. The Board
12 hereby incorporates the CEQA Findings by reference as though fully set forth in this
13 Ordinance.

14 Section 6. In accordance with the recommendation of the Director of Public Works
15 and the Director of Property, the Board of Supervisors hereby approves the Purchase and
16 Sale Agreement and the proposed purchase and sale transaction and authorizes and
17 approves the execution by the Director of Property of the Purchase and Sale Agreement in
18 substantially the form presented to the Board in City's name and on its behalf and any other
19 such documents that are necessary or advisable to effectuate the purpose and intent of this
20 Ordinance, and hereby authorizes the Director of Property to complete the contemplated
21 purchase and sale transaction.

22 Section 7. Additions, Amendments, and Modifications. The Board of Supervisors
23 authorizes the Director of Property to enter into any additions, amendments, or other
24 modifications to the Purchase and Sale Agreement and any other documents or instruments
25

1 in connection with the Purchase and Sale Agreement that the Director of Property determines
2 are in City's best interests, do not materially decrease City's benefits with respect to the
3 proposed purchase and sale transaction, do not materially increase the consideration or
4 expense to be paid by City pursuant to the Purchase and Sale Agreement or City's obligations
5 or liabilities in connection with the Purchase and Sale Agreement or the proposed purchase
6 and sale transaction, and are necessary and advisable to complete the proposed purchase
7 and sale transaction and effectuate the purpose and intent of this Ordinance, such
8 determination to be conclusively evidenced by the execution and delivery by the Director of
9 Property of any such additions, amendments, or other modifications.

10 Section 8. Approval and Ratification of Prior Actions. All actions prior to the
11 adoption of this Ordinance by City's officers with respect to the Purchase and Sale Agreement
12 and the proposed purchase and sale transaction are hereby approved, confirmed, and ratified.

13 Section 9. Pursuant to California Streets and Highways Code Sections 8330 et seq.
14 (Public Streets, Highways, and Service Easement Vacation Law, Summary Vacation) and
15 Section 787 of the San Francisco Public Works Code, the Board orders the summary vacation
16 of the Vacated Property immediately prior to the sale of the Vacated Property to T&M. The
17 Clerk of the Board of Supervisors and the Director of Property shall be authorized, and the
18 Clerk shall be directed, to record or cause to be recorded in the Official Records of the City
19 and County of San Francisco a certified copy of this Ordinance ordering such vacation as
20 provided in Section 8335(a) of the California Streets and Highways Code at the Closing (as
21 defined in the Purchase and Sale Agreement), and thereupon such vacation shall be effective
22 without any further action by the Board of Supervisors. Immediately following the recordation
23 of this Ordinance, the Director of Property is authorized to record the Deed, as defined in and
24

25

1 in accordance with the Purchase and Sale Agreement. In the event that the Closing does not
2 occur for any reason, then this Ordinance shall be null and void and shall not be recorded.

3 Section 10. The Clerk of the Board, Director of Property, and Director of Public Works
4 are hereby authorized and directed to take any and all actions that they or the City Attorney
5 may deem necessary or advisable in order to effectuate the purpose and intent of this
6 Ordinance.

7 Section 11. Effective Date. This Ordinance shall become effective 30 days from the
8 date of passage.

9

10

11 RECOMMENDED:

12

13

JOHN UPDIKE
Acting Director of Property

15

16

MOHAMMED NURU
Director of Public Works

18

19

20

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

23

24 By: _____
CHARLES SULLIVAN
Deputy City Attorney

25

Supervisor Kim
BOARD OF SUPERVISORS