

1 [Shaw Alley Public Improvements - Gift Acceptance and Permit for Maintenance]

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3 **Ordinance accepting the Shaw Alley public improvements and maintenance of same as**  
4 **a gift to the City; approving a major street encroachment permit for the construction**  
5 **and maintenance of the public improvements; deferring a portion of the additional**  
6 **street space occupancy permit fees associated with the permit and adjacent**  
7 **development; affirming the Planning Department's determination under the California**  
8 **Environmental Quality Act; adopting findings of consistency with the General Plan, and**  
9 **the eight priority policies of Planning Code, Section 101.1; and directing official acts in**  
10 **furtherance of this Ordinance.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

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

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20 Section 1. Findings.

21 (a) Shaw Alley is a one-block alley connecting Mission Street and Minna Street. 535  
22 Mission Street is located adjacent to Shaw Alley to the east, and runs the length of Shaw Alley  
23 from Mission Street to Minna Street.

24 (b) BXP Mission 535 LLC ("Boston Properties") currently is constructing a 27-story  
25 office building at 535 Mission Street.

(c) Boston Properties has agreed to construct certain public improvements on and in  
Shaw Alley, including the following: the removal of Shaw Alley's existing concrete and asphalt

1 finishes; raising Shaw Alley’s surface to the level of the sidewalk adjacent to 535 Mission  
2 Street along the Alley; finishing Shaw Alley and the adjacent sidewalk with continuous pavers  
3 and recessed LED lighting; and the removal of the curb cuts at Mission Street and Minna  
4 Street. These improvements result in the creation of a pedestrian plaza for the length of the  
5 Alley (the “Shaw Alley Public Improvements”) and are more fully shown in permit drawings  
6 and diagrams, copies of which are in the Clerk of the Board of Supervisors File No. 140065  
7 and are incorporated herein by reference.

8 (d) Pursuant to Public Works Code Section 786, Boston Properties requested  
9 permission to occupy portions of the public right-of-way to construct the Shaw Alley Public  
10 Improvements and provide for the maintenance of the Shaw Alley Public Improvements.  
11 Boston Properties has agreed to offer the Improvements and their maintenance in perpetuity  
12 as gifts to the City and County of San Francisco.

13 (e) The Planning Commission, in Motion No. 18628, certified the Final Environmental  
14 Impact Report for the Transit Center District Plan and related actions (the “FEIR”) as being in  
15 compliance with the California Environmental Quality Act (“CEQA”, Public Resources Code  
16 Sections 21000 et seq.). This FEIR analyzed the Shaw Alley Public Improvements project. A  
17 copy of said Motion is on file with the Clerk of the Board of Supervisors in File No. 120685 and  
18 is incorporated herein by reference.

19 (f) As part of various actions on the Transit Center District Plan, the Board of  
20 Supervisors adopted Ordinance No. 185-12, a copy of which is on file with the Clerk of the  
21 Board of Supervisors in File No. 120685. In this Ordinance, the Board adopted the CEQA  
22 findings of the Planning Commission from Motion No. 18629 as its own. These CEQA  
23 findings are incorporated herein by reference.

24 (g) The Board further finds that no substantial changes are proposed to the Shaw Alley  
25 Public Improvements project or the circumstances under which the project is undertaken that

1 would cause new significant environmental effects or any increase in the severity of previously  
2 identified significant effects in the FEIR. The Board further finds there is no new information  
3 of substantial importance showing that the project would have any significant effects not  
4 discussed in the FEIR, that significant effects would be substantially more severe, or that new  
5 or different mitigation measures or alternatives would substantially reduce one or more  
6 significant effects, if any, of the project.

7 (h) Policy 3.13 of the Transit Center District Plan calls for the closure of Shaw Alley to  
8 vehicular use, and for its use as a pedestrian plaza and as a link in the pedestrian network  
9 between the new Transbay Transit Center and Market Street.

10 (i) In a letter dated June 14, 2013, the Planning Department adopted findings that the  
11 actions contemplated in this Ordinance are consistent, on balance, with the City's General  
12 Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these  
13 findings as its own. A copy of said letter is on file with the Clerk of the Board of Supervisors in  
14 File No. 140065, and incorporated herein by reference.

15 (j) The Transportation Advisory Staff Committee, at its meeting of June 27, 2013,  
16 recommended the proposed encroachments for approval. Minutes of said meeting are on file  
17 with the Clerk of the Board of Supervisors in File No. 140065, and incorporated herein by  
18 reference.

19 (k) After a public hearing on August 18, 2013, the Department of Public Works  
20 recommended to the Board approval of a street encroachment permit for the Shaw Alley  
21 Public Improvements and their maintenance. This recommendation is contained in DPW  
22 Order No. 181,681 (the "DPW Order"), a copy of which is on file with the Clerk of the Board of  
23 Supervisors in File No. 140065, and incorporated herein by reference.

1 Section 2. Gift Acceptance.

2 (a) Boston Properties has made an irrevocable offer of the construction and  
3 maintenance of the Shaw Alley Public Improvements as a gift to the City and County of San  
4 Francisco. A copy of said offer is on file with the Clerk of the Board of Supervisors in File No.  
5 140065, and is incorporated herein by reference.

6 (b) The Board of Supervisors gratefully accepts this offer as a gift to the City and  
7 County of San Francisco.

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9 Section 3. Street Encroachment Permit Approval.

10 (a) The Street (Major) Encroachment Permit and its associated encroachment  
11 agreement for the Shaw Alley Public Improvements shall not become effective until:

12 (1) The Permittee executes and acknowledges the permit and delivers said Permit to  
13 the City's Controller, and

14 (2) DPW records the Permit and associated agreement in the County Recorder's  
15 Office.

16 (b) The Permit and its associated agreement are on file with the Clerk of the Board of  
17 Supervisors in File No. 140065 and incorporated herein by reference.

18 (c) The Permittee, at its sole expense and as is necessary as a result of this permit,  
19 shall make the following arrangements:

20 (1) To provide for the support and protection of facilities under the jurisdiction of DPW,  
21 the San Francisco Water Department, the San Francisco Fire Department and other City  
22 Departments, and public utility companies;

23 (2) To provide access to such facilities to allow said entities to construct, reconstruct,  
24 maintain, operate, or repair such facilities; and,

1 (3) To remove or relocate such facilities if installation of the encroachment requires  
2 said removal or relocation and to make all necessary arrangements with the owners of such  
3 facilities, including payment for all their costs, should said removal or relocation be required.

4 (d) No structures shall be erected or constructed within said street right-of-way except  
5 as specifically permitted herein.

6 (e) The Permittee shall assume all costs for the maintenance and repair of the  
7 encroachments and no cost or obligation of any kind shall accrue to DPW by reason of this  
8 permission granted.

9 (f) Pursuant to Public Works Code Section 786, the Board of Supervisors hereby  
10 grants revocable permission to Boston Properties, to occupy portions of the public right-of-  
11 way to install and maintain the Shaw Alley Public Improvements.

12 (g) The Board of Supervisors accepts the recommendations of the DPW Order and  
13 approves the Street Encroachment Permit and its associated agreement.

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15 Section 4. Fee Deferral.

16 Notwithstanding any contrary provision of the Public Works Code, the Board of  
17 Supervisors hereby defers the Additional Street Space Occupancy Permit fee under Public  
18 Works Code Section 724.7 for the occupation of Shaw Alley beginning on May 24, 2014 and  
19 ending on January 31, 2015.

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21 Section 5. Delegation of Street Acceptance; Other Requested Official Actions.

22 (a) The Board of Supervisors hereby delegates to the Director of the Department of  
23 Public Works the authority, upon completion of the Shaw Alley Public Improvements and  
24 certification from the City Engineer that the Improvements are ready for their intended use, to  
25 dedicate the Improvements to public use and accept the Improvements for City maintenance

1 and liability purposes, subject to the maintenance responsibility of Boston Properties pursuant  
2 to the permit described herein.

3 (b) The Board of Supervisors directs the Department of Public Works, in consultation  
4 with the City Attorney’s Office, and to take all actions necessary to implement the intent of this  
5 Ordinance, including authorizing the construction and maintenance of the Shaw Alley Public  
6 Improvements.

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

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

15 By: \_\_\_\_\_  
16 John D. Malamut  
17 Deputy City Attorney

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