

1 [Street Vacation Order - Parkmerced Development Project]

2

3 **Ordinance ordering the conditional vacation of portions of streets (along with public**

4 **service easements within those streets) that exist within the Subphases 1A and 1B of**

5 **the Parkmerced Development Project area, an approximately 152 acre site located in**

6 **the Lake Merced District in the southwest corner of San Francisco and generally**

7 **bounded by Vidal Drive, Font Boulevard, Pinto Avenue, and Serrano Drive to the north,**

8 **19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south,**

9 **and Lake Merced Boulevard to the west; reserving various easement rights in favor of**

10 **the City and third party utilities, subject to conditions specified in this ordinance;**

11 **delegating authority to the Director of Real Estate to execute certain quit claim deeds;**

12 **adopting findings under the California Environmental Quality Act; adopting findings**

13 **that the vacations are consistent with the Parkmerced Development Agreement, the**

14 **General Plan, and the eight priority policies of Planning Code, Section 101.1; directing**

15 **the Clerk of the Board of Supervisors to make certain transmittals; and authorizing**

16 **actions by City officials in furtherance of this Ordinance, as defined herein.**

17 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.

18 **Additions to Codes** are in *single-underline italics Times New Roman font*.

19 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

20 **Board amendment additions** are in double-underlined Arial font.

21 **Board amendment deletions** are in ~~strikethrough Arial font~~.

22 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

23

24 Section 1. Findings.

25

1 (a) On February 10, 2011, at a duly noticed public hearing, the Planning Commission
2 certified the Final Environmental Impact Report ("Final EIR") for the Parkmerced Mixed-Use
3 Development Project (the "Project"), by Motion No. 18269, finding that the Final EIR reflects
4 the independent judgment and analysis of the City and County of San Francisco, is adequate,
5 accurate and objective, contains no significant revisions to the Draft EIR, and the content of
6 the FEIR and the procedures through which the Final EIR was prepared, publicized and
7 reviewed comply with the provisions of the California Environmental Quality Act (California
8 Public Resources Code Sections 21000 et seq., "CEQA"), the State CEQA Guidelines
9 (California Code of Regulations Title 14 Sections 15000 et seq.), and Chapter 31 of the San
10 Francisco Administrative Code ("Chapter 31").

11 (b) At the same hearing at which the Planning Commission certified the Final EIR, the
12 Planning Commission by Motion No. 18270 adopted findings, as required by CEQA, regarding
13 the alternatives, mitigation measures, and significant environmental effects analyzed in the
14 Final EIR, a statement of overriding considerations for approval of the Project, and a proposed
15 mitigation monitoring and reporting program (collectively, "CEQA Findings").

16 (c) On May 24, 2011, at a duly noticed public hearing, the Board of Supervisors
17 reviewed and considered the Final EIR on appeal. By Motion No. M11-83, the Board of
18 Supervisors upheld the Planning Commission's certification of the Final EIR and found the
19 Final EIR to be complete, adequate and objective and reflecting the independent judgment of
20 the City and in compliance with CEQA and the State CEQA Guidelines.

21 (d) On June 7, 2011, at a duly noticed public hearing, the Board of Supervisors
22 considered the Project's approvals, which included amendments to the City's General Plan
23 (approved by Ordinance No. 92-11), Zoning Map (approved by Ordinance No. 91-11), and
24 Planning Code (approved by Ordinance No. 90-11), as well as approval of a Development
25 Agreement, approved on June 7, 2011 by Ordinance No. 89-11 (the "Development

1 Agreement”) (collectively, the “Project Approvals”). Ordinance No. 89-11 is on file with the
2 Clerk of the Board in File No. 110300 and is incorporated herein by reference.

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 Mitigation Monitoring and Reporting Program (“MMRP”) for
7 implementation by other City departments and recommended for adoption those mitigation
8 measures that are enforceable by agencies other than City departments. A copy of the CEQA
9 Findings and the Mitigation Monitoring and Reporting Program is on file with the Clerk of the
10 Board in File No. 110300 and is incorporated herein by reference.

11 (f) Section 6.1.1 of the Development Agreement requires that the City vacate portions
12 of streets along with public service easements at the locations generally shown in Exhibit J of
13 the Development Agreement, as and when needed in connection with the development of an
14 approved Development Phase for the Project. The Planning Director approved Development
15 Phase 1 of the Project on June 3, 2015. Development Phase 1 is comprised of four
16 Subphases (1A, 1B, 1C, and 1D).

17 (g) On February 20, 2015, Parkmerced Owner, LLC (together, with its successors and
18 assigns, the “Project Sponsor”) submitted three applications for tentative subdivision maps
19 pursuant to the requirements of the California Subdivision Map Act for Subphases 1A and 1B
20 of the Project. On August 21, 2015, Public Works (“PW”) pursuant to PW Order No. 183946
21 conditionally approved such tentative maps: (1) Tentative Map No. 8530 requested approval
22 to subdivide Assessor’s Blocks 7326, 7330, 7331, 7364, 7365, 7366 and 7370 (Parkmerced
23 Planning Blocks 20, 21S, and 22); (2) Tentative Map No. 8531 requested approval to
24 subdivide Assessor’s Block 7335 (Parkmerced Planning Block 6); and (3) Tentative Map No.
25 8532 requested approval to subdivide Assessor's Block 7308 (Parkmerced Planning Block 1)

1 (collectively, the “Subphase 1A and 1B Tentative Maps”). The Project Sponsor is currently
2 processing with PW the approval of a final subdivision map for each of the Subphase 1A and
3 1B Tentative Maps (each, a “Final Map”).

4 (h) Subphases 1A and 1B of the Project involve the conditional vacation of portions of
5 the following streets within Parkmerced along with public service easements in the streets to
6 be vacated: Vidal Drive, Galindo Avenue, Chumasero Drive, Acevedo Avenue, Serrano Drive,
7 Gonzalez Drive, Cambon Drive, and Font Boulevard. Together, the streets and public service
8 easements described in this Section 1(h) are the "Street Vacation Area." The Street Vacation
9 Area is shown in PW's SUR Map No. 2015-006, sheets 1 through 10. Copies of such maps
10 are on file with the Clerk of the Board in File No. 160851 and are incorporated herein by
11 reference.

12 (i) On August 2, 2016, the Board of Supervisors adopted Resolution No. 360-16 (the
13 “Resolution of Intention”), a copy of which is on file with the Clerk of the Board of Supervisors
14 in File No. 160870, declaring the intention of the Board to conditionally vacate the Street
15 Vacation Area.

16 (j) The Clerk of the Board of Supervisors published the Resolution of Intent in the
17 manner required by law, and the Director of PW posted the Resolution of Intent in the manner
18 required by law.

19 (k) When the Board of Supervisors held a duly noticed public hearing on this street
20 vacation order on September 6, 2016, the Board received public comment regarding the
21 vacation of the Street Vacation Area.

22 (l) The vacation of the Street Vacation Area is necessary to implement the Project, to
23 fulfill the objectives and requirements of the Development Agreement, and to fulfill the
24 objectives of the Parkmerced Special Use District (Planning Code Section 249.64). The
25 proposed vacations and other actions contemplated herein implement the Project vested by

1 the Project Approvals, including the construction of buildings and streets consistent with the
2 Parkmerced Design Standards and Guidelines, the Parkmerced Transportation Plan, and the
3 Parkmerced Infrastructure Report, all of which are incorporated by reference into the
4 Development Agreement.

5 (m) The City proposes to quitclaim its interest in the Street Vacation Area to the
6 Project Sponsor, consistent with Development Agreement Section 6.1.1.

7 (n) Because many of these streets and easements will remain in use until specified
8 times, no portion of the Street Vacation Area shall be vacated until certain conditions are
9 satisfied, as follows:

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

22 (2) The Project Sponsor shall provide PW with an acceptable Public
23 Improvement Agreement (“PIA”) pursuant to Section 1351 of the San Francisco Subdivision
24 Code and the Subdivision Map Act for all improvements within the Final Map or required for
25 development of the area shown in the Final Map prior to approval of a Final Map or issuance

1 of a Street Improvement Permit for Subphases 1A or 1B of the Project, whichever is earlier.
2 Such PIA shall address security provisions and provide interim easements or licenses via
3 separate offer, such that the City can complete the improvements if the Subdivider fails to do
4 so.

5 (o) In a letter dated July 5, 2016 (the “DRE Letter”), the Director of the Department of
6 Real Estate determined that: the Development Agreement contemplates the vacation of the
7 Street Vacation Area; Exhibit J of the Development Agreement shows the general locations of
8 the property vacations and dedications required by the Project; Section 6.1.2 of the
9 Development Agreement requires that (1) all real property exchanged under the Development
10 Agreement be valued on a square foot basis and shall be deemed equal in value per square
11 foot, (2) if any real property exchange under the Development Agreement results in a net loss
12 of acreage for the City, then the Project Sponsor must pay to the City the fair market value of
13 the real property loss at the time of transfer based on the then-current use of the property so
14 transferred, and (3) the City shall not be required to pay for any net gain in real property;
15 provided, however, such gain can be applied against future real property transfers for
16 purposes of determining whether there has been a net loss as described above. The Director
17 of Real Estate also determined in the DRE Letter that: the proposed vacations and
18 dedications associated with Subdivision Maps 8350, 8351, and 8352 result in a net gain in
19 real property owned by the City; therefore, no payment is owed by the Project for the vacation
20 of the Street Vacation Area; and this net gain should be credited against future public right of
21 way vacations for the Project. A copy of said letter is on file with the Clerk of the Board in File
22 No. 160851.

23 (p) The Board of Supervisors finds that the actions proposed herein are consistent with
24 and within the scope of the Project analyzed in the Final EIR and subject to the CEQA
25 Findings. The Board of Supervisors further finds that no substantial changes are proposed in

1 the Project and no substantial changes have occurred with respect to the circumstances
2 under which this Project will be undertaken that would cause new significant environmental
3 effects or a substantial increase in the severity of previously identified effects, and there is no
4 new information of substantial importance showing that the Project would have any significant
5 effects not discussed in the Project environmental impact report, that significant effects would
6 be substantially more severe, or that new or different mitigation measures or alternatives
7 would substantially reduce one or more significant effects of the Project. The Board affirms
8 the Planning Department's determination that an addendum to the Final EIR is not required
9 due to any changes in the Project or the Project's circumstances.

10 (q) In a letter dated August 3, 2015 (the "Planning Letter"), the Planning Department
11 determined that the proposed vacations and other actions contemplated herein are on
12 balance consistent with the General Plan and with the Eight Priority Policies of City Planning
13 Code Section 101.1, comply with applicable provisions of the Planning Code, and are
14 consistent with the Project as defined in the Development Agreement and the Project
15 Approvals. A copy of said letter is on file with the Clerk of the Board in File No. 160851 and is
16 incorporated herein by reference. The Board of Supervisors adopts as its own the consistency
17 findings of the Planning Letter.

18 (r) These street and public easement vacation actions are conducted under the general
19 vacation procedures of the California Public Streets, Highways and Service Easements
20 Vacation Law (California Streets and Highways Code Sections 8300 et seq.) and San
21 Francisco Public Works Code Section 787(a).

22 (s) The Director of PW has prepared PW Order No. 18513, dated July 22, 2016, in
23 regard to the vacations and other actions contemplated herein and makes the following
24 determinations: (1) upon satisfaction of the applicable condition or conditions provided in
25 Section 1(n), the respective Street Vacation Area will no longer be necessary for the City's

1 present or prospective future public street, sidewalk, and public service easement purposes
2 as all existing physical public or private utilities located in the Street Vacation Area will be
3 relocated to the satisfaction of the City as part of the construction of the Project; (2) with the
4 exception of those public easements noted in Sections 3(a) and (b) below, the public interest,
5 convenience, and necessity do not require any easements or other rights be reserved for any
6 public or private utility facilities that are in place in the Street Vacation Area and that any rights
7 based upon any such public or private utility facilities shall be extinguished automatically upon
8 the effectiveness of the vacation; (3) in accordance with California Streets and Highways
9 Code Section 892, for those portions of the Street Vacation Area to be conditionally vacated
10 identified in Section 1(n) above, upon satisfaction of the applicable condition or conditions, the
11 rights-of-way and parts thereof proposed within the respective Street Vacation Areas will no
12 longer be useful as a nonmotorized transportation facility, as defined in Section 887, because
13 the Development Agreement requires the dedication and construction of an extensive street,
14 bicycle path, pedestrian path, park, and trail system that is more extensive than the areas
15 being vacated hereby and that is designed to integrate with existing built streets in the
16 adjacent neighborhoods; and (4) it is a policy matter for the Board of Supervisors to quitclaim
17 the City's interest in the Street Vacation Area to the Buyer, subject to the requirements of the
18 Development Agreement. A copy of the PW Order is on file with the Clerk of the Board of
19 Supervisors in File No. 160851 and is incorporated herein by reference.

20 (t) In addition, in the PW Order the PW Director recommended: (1) that the Board of
21 Supervisors adopt the legislation to vacate the Street Vacation Area; (2) that the Board of
22 Supervisors approve all actions set forth herein and previously taken by the Officers of the
23 City with respect to this vacation; (3) although the consent of all property owners adjacent to
24 the Street Vacation Area was not obtained, the applicant made reasonable attempts to notify
25 and obtain consent from all property owners adjacent to the Street Vacation Area and the

1 proposed street vacations do not deprive any private landowner of access to the built public
2 street grid; and (4) that the Board of Supervisors authorize the Mayor, Clerk of the Board,
3 Director of Property, County Surveyor, and Director of PW to take any and all actions which
4 they or the City Attorney may deem necessary or advisable to effectuate the purpose and
5 intent of this ordinance.

6 (u) In addition, in the PW Order the PW Director determined that the public interest,
7 convenience, and necessity require that the City reserve from the vacation of the Street
8 Vacation Area non-exclusive easements for the benefit of the City (and subject to possible
9 grants by the City of temporary, immediately revocable licenses by the City in favor of AT&T,
10 PG&E, and any other utilities) for any utilities, telecommunications facilities, or power and gas
11 transmission facilities, respectively, located in, upon, and over any portion of the Street
12 Vacation Area in which their respective in-place and functioning utilities are located as of the
13 effective date of this ordinance, to the extent necessary to maintain, operate, repair, and
14 remove existing lines of pipe, conduits, cables, wires, poles, and other convenient structures,
15 equipment and fixtures for the operation by City of City utilities, by AT&T of
16 telecommunications facilities, by PG&E of power and gas transmission facilities, or for other
17 public utilities. This reservation, and any subsequent grant of easements or licenses is subject
18 to the City's authority to require AT&T, PG&E, and any other utilities to remove or relocate
19 their facilities at no expense to the City when necessary to accommodate a project done
20 under the governmental authority of the City. This reservation and the automatic
21 extinguishment of the reservation to occur upon satisfaction of certain conditions are
22 described in Section 3 below.

23 (v) Furthermore, in the PW Order the PW Director determined that the public interest,
24 convenience, and necessity require that the City reserve from the vacation of the Street
25 Vacation Area temporary access for the benefit of the public over any portion of the Street

1 Vacation Area where required to preserve access between a private property and the existing
2 street grid as of the effective date of this ordinance. This reservation and the automatic
3 extinguishment of the reservation shall occur upon satisfaction of certain conditions that are
4 described Section 3 in below. The Board adopts the findings of the PW Director as its own.

5
6 Section 2. Street Vacation and Conditions.

7 (a) Except as set forth in Sections 3 and 4 below, the Board of Supervisors hereby
8 vacates the Street Vacation Area, as shown on PW SUR Map No. 2015-006, sheets 1 through
9 10 (to the extent referring to streets and public service easements to be conditionally
10 vacated), in the manner described in Section (1)(m), upon satisfaction of the conditions
11 described in this ordinance and pursuant to California Streets and Highways Code Sections
12 8300 et seq. and San Francisco Public Works Code Section 787(a).

13 (b) The Board of Supervisors hereby finds that the Street Vacation Area is
14 unnecessary for present or prospective public use, subject to the conditions described in this
15 ordinance.

16 (c) The Board finds that the public interest, convenience, and necessity require that
17 the Street Vacation be done as declared in this ordinance.

18 (d) The Street Vacation shall be effective as to all of the Street Vacation Area upon
19 satisfaction of the conditions in Sections 3 and 4 and recording of the City's quitclaim deed in
20 substantially the same form as the draft quitclaim deed on file with the Clerk of the Board of
21 Supervisors in File No. 160851.

22
23 Section 3. Conditions to the Street Vacation; Reservation and Easements.

24 (a) The vacation of the Street Vacation Area is subject to the reservation of non-
25 exclusive easements on the terms and conditions described in Section 1(n) above for the

1 benefit of the City (and subject to possible grants by the City of temporary, immediately
2 revocable licenses by the City in favor of AT&T, PG&E, and any other utilities) for any City
3 utilities, telecommunications facilities, power and gas transmission utilities, or other public
4 facilities that are located in, upon, or over any portion of the Street Vacation Area in which
5 their respective in-place and functioning utilities are located, to the extent necessary to
6 maintain, operate, repair, and remove existing lines of pipe, conduits, cables, wires, poles,
7 and other convenient structures, equipment and fixtures for the operation of such utilities. To
8 the extent the non-exclusive easements described in this Section 3(a) have not previously
9 merged into a fee interest held by the City, such non-exclusive easements reserved in this
10 Section 3(a) shall be automatically extinguished when such alternative replacement facilities
11 are completed to the satisfaction of the City Engineer and the Board of Supervisors accepts
12 the facilities. The City shall execute a quitclaim of any interest in any easement reserved
13 under this Section 3(a) and shall cause such quitclaim to be recorded against the subject
14 property upon the fee title owner demonstrating to the City that replacement utilities serving
15 the affected area have been substantially completed and operable. In the event a non-
16 exclusive easement described in this Section 3(a) has merged into the fee interest held by the
17 City, such interest shall be deemed to be automatically extinguished and conveyed at the time
18 the fee interest is conveyed by the City to the Project Sponsor or any other transferee
19 pursuant to the Development Agreement.

20 (b) The vacation of the Street Vacation Area is subject to the reservation of temporary
21 access for the benefit of the public over any portion of the Street Vacation Area where
22 required to preserve access between a private property and the existing street grid as of the
23 effective date of this ordinance. To the extent the access rights described in this Section 3(b)
24 have not previously merged into a fee interest held by the City, such access reserved in this
25 Section 3(b) shall be automatically extinguished when replacement access serving the

1 affected area has been substantially completed and is open to the public as certified by PW.
2 In the event a non-exclusive easement described in this Section 3(b) has merged into the fee
3 interest held by the City, such interest shall be deemed to be automatically extinguished and
4 conveyed at the time the fee interest is conveyed by the City to the Project Sponsor or any
5 other transferee pursuant to the Development Agreement.

6 (c) The PIA shall provide that, prior the issuance of the First Certificate of Occupancy
7 for the first building constructed as part of Development Phase 1 of the Project, the Project
8 Sponsor shall perform those actions as reasonably required by the City (which, for purposes
9 of clarity, may include execution of a quitclaim deed or performance of a quiet title action) to
10 clarify that the City owns fee title to the public streets in the Parkmerced Development Project
11 area in existence as of the effective date of this ordinance.

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

19 (e) Except as specifically provided in this ordinance above and subject to the
20 conditions set forth in Section 3 and Section 4 of this ordinance, no easements or other rights
21 are reserved for any public utility facilities that are in place in the Street Vacation Area and
22 any rights based upon any such public utility facilities shall be extinguished upon the
23 effectiveness of the vacation hereunder.

24
25 Section 4. Execution of Quitclaim Deeds and Delegation to Director of Real Estate.

1 (a) The Board of Supervisors hereby authorizes the Director of Real Estate to execute
2 City quitclaim deeds to the Project Sponsor for those portions of the Street Vacation Area to
3 be conditionally vacated (as described in Section (1)(n)) upon satisfaction of the applicable
4 conditions set forth in that section.

5 (b) The quitclaim deeds executed pursuant to this Section 4 shall include the
6 reservations of: (1) the non-exclusive easements to AT&T for telecommunications purposes,
7 to PG&E for power and gas transmission purposes, and to the City for City utilities described
8 in Section 3; and (2) the temporary access to the extent necessary as described in Section 3.
9 The Board hereby delegates to the Director of Real Estate, in cooperation with the County
10 Surveyor, the authority to determine precise locations of the boundaries of quitclaims to be
11 prepared and recorded pursuant to this ordinance so as to fully implement the intent of this
12 ordinance and to fully implement the Project.

13
14 Section 5. The Board of Supervisors hereby directs the Clerk of the Board of
15 Supervisors to transmit to the Director of PW certified copies of this ordinance, and the Board
16 of Supervisors hereby urges the Director of PW to proceed in the manner required by law.
17 The Clerk of the Board also is hereby directed to transmit to the Director of PW certified
18 copies of this ordinance so that this ordinance may be recorded together with any other
19 documents necessary to effectuate this ordinance.

20
21 Section 6. The Mayor, Clerk of the Board, Director of Property, and Director of PW are
22 hereby authorized and directed to take any and all actions which they or the City Attorney may
23 deem necessary or advisable in order to effectuate the purpose and intent of this ordinance
24
25

1 (including, without limitation, the filing of the ordinance in the Official Records of the City and
2 County of San Francisco, determination of the precise locations of the boundaries of
3 quitclaims to be prepared and recorded pursuant to this ordinance, confirmation of satisfaction
4 of any of the conditions to the effectiveness of the vacation of any portion of the Street
5 Vacation Area hereunder, and confirmation of the reservation of easements and of temporary
6 access pursuant to Sections 3(a) and (b) of this ordinance and execution and delivery of any
7 evidence of same, which shall be conclusive as to the satisfaction of such conditions upon
8 signature by any such City official or his or her designee).

9
10 Section 7. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

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

17 By: _____
18 MARLENA BYRNE
19 Deputy City Attorney

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