

1 [San Francisco Public Utilities Commission Public Service Easement Vacation Order -
2 Parkmerced Development Project]

3 **Ordinance 1) ordering the conditional vacation of certain San Francisco Public Utilities**
4 **Commission (SFPUC) public service easements that exist within Subphases 1A and 1B**
5 **of 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; 2) reserving easement rights in favor of the**
10 **SFPUC, subject to conditions specified in this Ordinance; 3) delegating authority to the**
11 **Director of Real Estate to execute certain quit claim deeds; 4) adopting findings under**
12 **the California Environmental Quality Act; 5) adopting findings that the vacations are**
13 **consistent with the Parkmerced Development Agreement, the General Plan, and the**
14 **eight priority policies of Planning Code, Section 101.1; 6) directing the Clerk of the**
15 **Board of Supervisors to make certain transmittals; and 7) authorizing actions by City**
16 **officials in furtherance of this Ordinance.**

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
23 subsections or parts of tables.

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

25 Section 1. Findings.

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 (California Code of
21 Regulations Title 14 Sections 15000 et seq.).

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

1 Agreement, approved on June 7, 2011 by Ordinance No. 89-11 (the “Development
2 Agreement”) (collectively, the “Project Approvals”). Ordinance No. 89-11 is on file with the
3 Clerk of the Board in File No. 110300 and is incorporated herein by reference. The SFPUC
4 Commission on June 14, 2011 adopted a consent to the Development Agreement (SFPUC
5 Commission Resolution No. 11-0091).

6 (e) In approving the Project, including in its approval of the Development Agreement
7 by Ordinance No. 89-11, the Board of Supervisors adopted the Planning Commission's CEQA
8 Findings as its own and incorporated them by reference. In so doing, the Board of Supervisors
9 approved and endorsed the Mitigation Monitoring and Reporting Program (“MMRP”) for
10 implementation by other City departments and recommended for adoption those mitigation
11 measures that are enforceable by agencies other than City departments. A copy of the CEQA
12 Findings and the Mitigation Monitoring and Reporting Program is on file with the Clerk of the
13 Board in File No. 110300 and is incorporated herein by reference.

14 (f) Section 6.1.1 of the Development Agreement requires that the City convey to
15 Project Sponsor any real property needed in connection with the development of an approved
16 Development Phase for the Project, following vacation and abandonment of any public rights
17 and relocation of any utilities in such real property. The Planning Director approved
18 Development Phase 1 of the Project on June 3, 2015. Development Phase 1 is comprised of
19 four Subphases (1A, 1B, 1C, and 1D).

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

1 Planning Blocks 20, 21S, and 22); (2) Tentative Map No. 8531 requested approval to
2 subdivide Assessor's Block 7335 (Parkmerced Planning Block 6); and (3) Tentative Map No.
3 8532 requested approval to subdivide Assessor's Block 7308 (Parkmerced Planning Block 1)
4 (collectively, the "Subphase 1A and 1B Tentative Maps"). The Project Sponsor is currently
5 processing with PW the approval of a final subdivision map for each of the Subphase 1A and
6 1B Tentative Maps (each, a "Final Map").

7 (h) Subphases 1A and 1B of the Project involve the conditional vacation of certain
8 public service easements (including sewer, storm drain, and water line easements) owned by
9 the San Francisco Public Utilities Commission located within and outside of existing streets
10 (the "Public Utility Easements"). The SFPUC Vacation Area is shown in Public Works SUR
11 Map Nos. 2016-005, 2016-007, 2016-008, 2016-009, 2016-010, 2016-011, 2016-012, 2016-
12 013, 2016-014, 2016-015, 2016-016, 2016-020, and 2016-021. Copies of such maps are on
13 file with the Clerk of the Board in File No. 161240 and are incorporated herein by reference.

14 (i) On December 13, 2016, the Board of Supervisors adopted Resolution No. 525-16
15 (the "Resolution of Intention"), a copy of which is on file with the Clerk of the Board of
16 Supervisors in File No. 161239, declaring the intention of the Board to conditionally vacate the
17 Public Utility Easements.

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

21 (k) When the Board of Supervisors held a duly noticed public hearing on this public
22 utility vacation order on January 10, 2017, the Board received public comment regarding the
23 vacation of the Public Utility Easements.

24 (l) The vacation of the Public Utility Easements is necessary to implement the Project,
25 to fulfill the objectives and requirements of the Development Agreement, and to fulfill the

1 objectives of the Parkmerced Special Use District (Planning Code Section 249.64). The
2 proposed vacations and other actions contemplated herein implement the Project vested by
3 the Project Approvals, including the construction of buildings and streets consistent with the
4 Parkmerced Design Standards and Guidelines, the Parkmerced Transportation Plan, and the
5 Parkmerced Infrastructure Report, all of which are incorporated by reference into the
6 Development Agreement.

7 (m) The City proposes to quitclaim its interest in the Public Utility Easements to the
8 Project Sponsor, consistent with Development Agreement Section 6.1.1.

9 (n) Because certain of the easements will remain in use until specified times, no
10 portion of the Public Utility Easements shall be vacated until the Project Sponsor provides PW
11 with an acceptable Public Improvement Agreement (“PIA”) pursuant to Section 1351 of the
12 San Francisco Subdivision Code and the Subdivision Map Act for all improvements within the
13 Final Map or required for development of the area shown in the Final Map prior to approval of
14 a Final Map or issuance of a Street Improvement Permit for Subphases 1A or 1B of the
15 Project, whichever is earlier. Such PIA shall address security provisions and provide interim
16 easements or licenses via separate offer, such that the City can complete the improvements if
17 the Project Sponsor fails to do so.

18 (o) On October 25, 2016, after a duly noticed public hearing, the San Francisco
19 Public Utilities Commission in Resolution No. 16-0224, determined that the Public Utility
20 Easements were surplus and unnecessary for public utility purposes, and therefore
21 recommended that the Board of Supervisors terminate and vacate such easements subject to
22 the conditions in this ordinance and authorize the General Manager of the SFPUC to quitclaim
23 these real property interests. A copy of this resolution is on file with the Clerk of the Board of
24 Supervisors in File No. 161240.

1 (p) The Board of Supervisors finds that the actions proposed herein are consistent with
2 and within the scope of the Project analyzed in the Final EIR and subject to the CEQA
3 Findings. The Board of Supervisors further finds that no substantial changes are proposed in
4 the Project and no substantial changes have occurred with respect to the circumstances
5 under which this Project will be undertaken that would cause new significant environmental
6 effects or a substantial increase in the severity of previously identified effects, and there is no
7 new information of substantial importance showing that the Project would have any significant
8 effects not discussed in the Project environmental impact report, that significant effects would
9 be substantially more severe, or that new or different mitigation measures or alternatives
10 would substantially reduce one or more significant effects of the Project. The Board affirms
11 the Planning Department's determination that an addendum to the Final EIR is not required
12 due to any changes in the Project or the Project's circumstances.

13 (q) In a letter dated November 14, 2016 (the "Planning Letter"), the Planning
14 Department determined that the proposed vacations and other actions contemplated herein
15 are on balance consistent with the General Plan and with the Eight Priority Policies of City
16 Planning Code Section 101.1, comply with applicable provisions of the Planning Code, and
17 are consistent with the Project as defined in the Development Agreement and the Project
18 Approvals. A copy of said letter is on file with the Clerk of the Board in File No. 161240 and is
19 incorporated herein by reference. The Board of Supervisors adopts as its own the consistency
20 findings of the Planning Letter.

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

1 (s) The Director of PW has prepared PW Order No. 185483, dated November 21,
2 2016, in regard to the vacations and other actions contemplated herein and makes the
3 following determinations: (1) upon satisfaction of the applicable condition or conditions
4 provided in Section 1(n), the respective Public Utility Easements will no longer be necessary
5 for the City's present or prospective public service easement purposes as all existing physical
6 public utilities located in the Public Utility Easements will be relocated to the satisfaction of the
7 City as part of the construction of the Project; (2) with the exception of those public easements
8 noted in Sections 3(a) below, the public interest, convenience, and necessity do not require
9 any easements or other rights be reserved for any public utility facilities that are in place in the
10 Public Utility Easements and that any rights based upon any such public utility facilities shall
11 be extinguished automatically upon the effectiveness of the vacation; (3) in accordance with
12 California Streets and Highways Code Section 892, for those portions of the Public Utility
13 Easements to be conditionally vacated identified in Section 1(n) above, upon satisfaction of
14 the applicable condition or conditions, the respective Public Utility Easements will no longer be
15 useful as a non-motorized transportation facility, as defined in Section 887, because the
16 Development Agreement requires the dedication and construction of an extensive street,
17 bicycle path, pedestrian path, park, and trail system that is more extensive than the areas
18 being vacated hereby and that is designed to integrate with existing built streets in the
19 adjacent neighborhoods; and (4) it is a policy matter for the Board of Supervisors to quitclaim
20 the City's interest in the Public Utility Easements to the Buyer, subject to the requirements of
21 the Development Agreement. A copy of the PW Order is on file with the Clerk of the Board of
22 Supervisors in File No. 161240 and is incorporated herein by reference.

23 (t) In addition, in the PW Order the PW Director recommended: (1) that the Board of
24 Supervisors adopt the legislation to vacate the Public Utility Easements; (2) that the Board of
25 Supervisors approve all actions set forth herein and previously taken by the Officers of the

1 City with respect to this vacation; (3) although the consent of all property owners adjacent to
2 the Public Utility Easements was not obtained, the applicant made reasonable attempts to
3 notify and obtain consent from all property owners adjacent to the Public Utility Easements
4 and the proposed street vacations do not deprive any private landowner of access to the built
5 public street grid; and (4) that the Board of Supervisors authorize the Mayor, Clerk of the
6 Board, Director of Property, County Surveyor, Executive Directors of the Public Utilities
7 Commission, and Director of PW to take any and all actions which they or the City Attorney
8 may deem necessary or advisable to effectuate the purpose and intent of this ordinance.

9 (u) In addition, solely for those Public Utility Easements shown on SUR Maps 2016-
10 005, 2016-011, 2016-013, 2016-015, and 2016-016, in the PW Order the PW Director
11 determined that the public interest, convenience, and necessity require that the City reserve
12 from the vacation of the Public Utility Easements shown on SUR Maps 2016-005, 2016-011,
13 2016-013, 2016-015, and 2016-016, non-exclusive easements for the benefit of the City for
14 water main utilities located in, upon, and over the Public Utility Easements shown on SUR
15 Maps 2016-005, 2016-011, 2016-013, 2016-015, and 2016-016 in which the SFPUC's in-
16 place and functioning utilities are located as of the effective date of this ordinance, to the
17 extent necessary to maintain, operate, repair, and remove existing lines of pipe and other
18 convenient structures, equipment and fixtures for the operation by SFPUC of SFPUC utilities.
19 This reservation and the automatic extinguishment of the reservation to occur upon
20 satisfaction of certain conditions are described in Section 3 below.

21
22 Section 2. Public Utility Easement Vacation.

23 (a) Except as set forth in Sections 3 and 4 below, the Board of Supervisors hereby
24 vacates the Public Utility Easements in the manner described in Section (1)(m), upon
25 satisfaction of the conditions described in this ordinance and pursuant to California Streets

1 and Highways Code Sections 8300 et seq. and San Francisco Public Works Code Section
2 787(a).

3 (b) The Board of Supervisors hereby finds that the Public Utility Easements are
4 unnecessary for present or prospective public use, subject to the conditions described in this
5 ordinance.

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

8 (d) The Vacation Action shall be effective as to all of the Public Utility Easements upon
9 satisfaction of the conditions in Sections 1, 3 and 4 and recording of the City's quitclaim deed
10 in substantially the same form as the draft quitclaim deed on file with the Clerk of the Board of
11 Supervisors in File No. 161240.

12
13 Section 3. Conditions to the Vacation Action; Reservation and Easements.

14 (a) The vacation of the Public Utility Easements shown on SUR Maps 2016-005, 2016-
15 011, 2016-013, 2016-015, and 2016-016 are subject to the reservation of non-exclusive
16 easements on the terms and conditions described in Section 1(n) above for the benefit of the
17 City for the utilities that are located in, upon, or over any portion of the Public Utility
18 Easements shown on SUR Maps 2016-005, 2016-011, 2016-013, 2016-015, and 2016-016 in
19 which the SFPUC's respective in-place and functioning utilities are located, to the extent
20 necessary to maintain, operate, repair, and remove existing lines of pipe and other convenient
21 structures, equipment and fixtures for the operation of such utilities and also the rights to trim
22 and cut down trees and brush that may be a hazard to the utilities. To the extent the non-
23 exclusive easements described in this Section 3(a) have not previously merged into a fee
24 interest held by the City, such non-exclusive easements reserved in this Section 3(a) shall be
25 automatically extinguished when such alternative replacement facilities are completed to the

1 satisfaction of the City Engineer and the Board of Supervisors accepts the facilities. The City
2 shall execute a quitclaim of any interest in any easement reserved under this Section 3(a) and
3 shall cause such quitclaim to be recorded against the subject property upon the fee title owner
4 demonstrating to the City that replacement utilities serving the affected area have been
5 substantially completed and operable. In the event a non-exclusive easement described in
6 this Section 3(a) has merged into the fee interest held by the City, such interest shall be
7 deemed to be automatically extinguished and conveyed at the time the fee interest is
8 conveyed by the City to the Project Sponsor or any other transferee pursuant to the
9 Development Agreement.

10 (b) The PIA shall provide that, prior the issuance of the first certificate of occupancy for
11 the first building constructed as part of Development Phase 1 of the Project, the Project
12 Sponsor shall perform those actions as reasonably required by the City (which may include,
13 but not be limited to, execution of a quitclaim deed or performance of a quiet title action) to
14 clarify that the City owns fee title to the public streets and/or the Public Utilities Easements in
15 the Parkmerced Development Project as of the date of issuance of the said certificate of
16 occupancy.

17 (c) Except as specifically provided in this ordinance and subject to the conditions set
18 forth in this Section 3 and in Section 4 of this ordinance, no easements or other rights are
19 reserved for any public utility facilities that are in place in the Public Utility Easements and any
20 rights based upon any such public utility facilities shall be extinguished upon the effectiveness
21 of the vacation hereunder.

22
23 Section 4. Execution of Quitclaim Deeds and Delegation to Director of Real Estate.

24 (a) The Board of Supervisors hereby authorizes the Director of Real Estate to execute
25 City quitclaim deeds to the Project Sponsor for those portions of the Public Utility Easements

1 to be conditionally vacated (as described in Section (1)(n)) upon satisfaction of the applicable
2 conditions set forth in Section (1)(n).

3 (b) The quitclaim deeds executed pursuant to this Section 4 shall include the
4 reservations of the non-exclusive easements to the City for City utilities described in Section
5 3. The Board hereby delegates to the Director of Real Estate, in cooperation with the County
6 Surveyor, the authority to prepare and record quitclaims pursuant to this ordinance so as to
7 fully implement the intent of this ordinance and to fully implement the Project.

8
9 Section 5. The Board of Supervisors hereby directs the Clerk of the Board of
10 Supervisors to transmit to the Director of PW certified copies of this ordinance, and the Board
11 of Supervisors hereby urges the Director of PW to proceed in the manner required by law.
12 The Clerk of the Board also is hereby directed to transmit to the Director of PW certified
13 copies of this ordinance so that this ordinance may be recorded together with any other
14 documents necessary to effectuate this ordinance.

15
16 Section 6. The Mayor, Clerk of the Board, Director of Property, the General Manager
17 of the San Francisco Public Utilities Commission, and Director of PW are hereby authorized
18 and directed to take any and all actions which they or the City Attorney may deem necessary
19 or advisable in order to effectuate the purpose and intent of this ordinance (including, without
20 limitation, the filing of the ordinance in the Official Records of the City and County of San
21 Francisco, determination of the precise locations of the boundaries of quitclaims to be
22 prepared and recorded pursuant to this ordinance, confirmation of satisfaction of any of the

1 conditions to the effectiveness of the vacation of any portion of the Public Utility Easements
2 hereunder, and confirmation of the reservation of easements pursuant to Section 3(a) of this
3 ordinance and execution and delivery of any evidence of same, which shall be conclusive as
4 to the satisfaction of such conditions upon signature by any such City official or his or her
5 designee).

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

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 MARLENA BYRNE

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