

1 [Real Property Acquisition - Sidewalks Along Portions of Van Ness Avenue and South Van
Ness Avenue]

2
3 **Ordinance authorizing the Director of Property to agree to acquire and accept the State**
4 **of California's relinquishment of all its right, title, and interest in and to the sidewalks**
5 **along portions of Van Ness Avenue (between Lombard Street and Market Street),**
6 **portions of South Van Ness Avenue (between Market Street and Plum Street), and the**
7 **underlying real property (if any and without warranty), except as otherwise excepted**
8 **and reserved by the State of California; authorizing the placement of such sidewalks**
9 **and real property, upon acquisition, under the jurisdiction of Public Works; authorizing**
10 **additional official City actions required to consummate the relinquishment of the**
11 **sidewalks, as defined herein; authorizing the Director of Public Works to amend an**
12 **existing Delegated Maintenance Agreement with the State of California regarding**
13 **shared maintenance of portions of Van Ness Avenue and maintenance cost allocation,**
14 **upon relinquishment of the sidewalks; waiving fees and bonding requirements for the**
15 **State of California that would be otherwise applicable to excavation permits; waiving**
16 **the required 90-days' notice of intention to relinquish set forth in California Streets and**
17 **Highways Code, Section 73; adopting the Planning Department's determination that**
18 **such acquisition is consistent with the General Plan, and the eight priority policies of**
19 **Planning Code, Section 101.1; and adopting the Planning Department's determination**
20 **under the California Environmental Quality Act.**

21 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
22 **Additions to Codes** are in *single-underline italics Times New Roman font*.
23 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
24 **Board amendment additions** are in double-underlined Arial font.
25 **Board amendment deletions** are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. General Findings.

4 (a) Van Ness Avenue, a 125-foot wide avenue generally situated between Nob and
5 Russian Hills, the Tenderloin, and Civic Center Plaza to the east, and Cow Hollow, Pacific
6 Heights, the Western Addition, and Hayes Valley to the west, was originally intended to
7 function as San Francisco's central north-south spine. Despite grand hopes for Van Ness
8 Avenue, development of properties along the avenue was initially slow and the U.S. Coast
9 Survey of 1869 indicated only scattered structures. By the 1920s, aside from several large
10 apartment buildings, automobile-oriented businesses, including grandiose showrooms,
11 emerged as the most common use between Civic Center and Jackson Street. After the
12 Second World War, the designation of the majority of Van Ness Avenue as U.S. Highway 101
13 led to the use of the avenue as a primary vehicular thoroughfare and the concurrent re-
14 orientation of businesses towards citywide and regional markets.

15 (b) Following the decline and relocation of automobile-oriented businesses, former
16 automobile showrooms have been converted into restaurants, offices, and mixed use
17 residential developments. Given the relocation of the auto showroom businesses and
18 ancillary automobile service and parts businesses, numerous properties along Van Ness
19 Avenue have become available for new development or adaptive re-use in recent years.

20 (c) The State of California, acting by and through its Department of Transportation
21 ("Caltrans"), currently exercises regulatory jurisdiction over the portions of Van Ness Avenue
22 designated as U.S. Highway 101, including authority to control encroachments within the
23 State highway right-of-way. Presently, Caltrans has sole authority to approve and issue
24 permits for activities on State highway right-of-way, and Caltrans does not issue
25 encroachment permits to allow building structures (e.g., bay windows, cornices, and

1 decorative features extending beyond the surface of a building) to extend into the State
2 highway right-of-way.

3 (d) Pursuant to the Agreement for Maintenance of State Highways in the City of San
4 Francisco approved by the City and County of San Francisco ("City") on June 10, 2009,
5 pursuant to Board of Supervisors Resolution No. 209-09, and as amended on October 27,
6 2011 ("Delegated Maintenance Agreement"), Caltrans previously delegated to the City certain
7 maintenance responsibilities over the State Highways located within the City's jurisdiction as
8 authorized pursuant to the California Streets and Highways Code, including maintenance of
9 the Van Ness Sidewalks. Pursuant to the Delegated Maintenance Agreement, the City
10 currently performs certain maintenance of the Van Ness Sidewalks consistent with the
11 Municipal Code, and Caltrans reimburses the City for such maintenance work according to the
12 Delegated Maintenance Agreement. However, the City has not been delegated authority to
13 grant building structures permission to extend into the State highway right-of-way. A copy of
14 the Delegated Maintenance Agreement and of Resolution No. 209-09 are on file with the
15 Clerk of the Board of Supervisors in File No. 090630.

16 (e) The Van Ness Area Plan of the General Plan (as amended pursuant to Ordinance
17 No. 144-13, a copy of which is on file with the Clerk of the Board of Supervisors in File No.
18 130508) contains a variety of urban design objectives and policies that are difficult to
19 implement without authorizing encroachment upon the sidewalks along Van Ness Avenue,
20 including: encouraging development which "reinforces topography and urban pattern, and
21 defines and gives variety to the avenue" (Van Ness Plan, Urban Design Objective 5),
22 encouraging a regular street wall and harmonious building forms along Van Ness Avenue
23 (Van Ness Plan, Urban Design Policy 5.2), encouraging full lot development resulting in a
24 maximum number of dwelling units (Van Ness Plan, Urban Design Policy 5.5), designing
25 exterior facades which complement and enhance significant works of architecture along Van

1 Ness Avenue (Van Ness Plan, Urban Design Policy 6.1), and differentiating bases of buildings
2 and incorporating detail at ground level through variety in materials, color, texture, and
3 architectural projections (Van Ness Plan, Urban Design Policy 6.4).

4 (f) The Van Ness Area Plan of the General Plan also contains multiple streetscape
5 objectives and policies that are difficult to implement without authorizing encroachment upon
6 the sidewalks along Van Ness Avenue, including: creating an attractive street and sidewalk
7 space which contributes to the transformation of Van Ness Avenue into a residential
8 boulevard (Van Ness Plan, Streetscape Objective 8), requiring sponsors of major renovation
9 or new development projects to improve and maintain the sidewalk space abutting their
10 properties according to the guidelines contained in the Van Ness Plan (Van Ness Plan,
11 Streetscape Policy 8.1), planting and maintaining trees within the sidewalk space and the
12 median strip (Van Ness Plan, Streetscape Policy 8.2), providing attractive street furniture at
13 convenient locations and intervals throughout the length of the street (Van Ness Plan,
14 Streetscape Policy 8.9), and placing new or replacement bus shelters between the trees along
15 the tree line of the sidewalk and attaching benches to the ground and located between the
16 trees along the tree line of the sidewalk adjacent to bus stops (Van Ness Plan, Streetscape
17 Policy 8.9).

18 (g) The City has adopted policies such as the Better Streets Plan, which took effect on
19 January 16, 2011 pursuant to Ordinance No. 310-10, a copy of which is on file with the Clerk
20 of the Board of Supervisors in File No. 101193, and the City remains engaged in
21 implementing the Better Streets Plan and other efforts to revitalize neighborhoods and
22 activate spaces along streets and sidewalks throughout the City. City residents have
23 expressed significant interest in revitalizing and activating the sidewalks along Van Ness
24 Avenue.

1 (h) For the reasons set forth above, Caltrans desires to relinquish to the City, at no
2 cost to the City and without warranty, all of Caltrans' right, title, and interest in and to portions
3 of sidewalks along Van Ness Avenue (between Lombard Street and Market Street), portions
4 of sidewalks along South Van Ness Avenue (between Market Street and Plum Street), and
5 the real property underlying such sidewalks, if any (together, the "Van Ness Sidewalks"), as
6 depicted in Sheet 1 through Sheet 9 of the Caltrans map titled "Right of Way Relinquishment,
7 REL. NO. 56130," dated as of August 2016, on file with the Clerk of the Board of Supervisors
8 in File No.161285 and incorporated herein by reference.

9 (i) Caltrans proposes to relinquish to the City all of Caltrans' right, title, and interest in
10 and to the Van Ness Sidewalks, at no cost to the City and without warranty, after the Board of
11 Supervisors approves this ordinance, and following approval of the relinquishment by the
12 California Transportation Commission ("CTC") by way of a resolution. A copy of the proposed
13 resolution (the "CTC Resolution") and of the other documents required to effectuate the
14 State's relinquishment and the City's acceptance of the Van Ness Sidewalks and underlying
15 real property are on file with the Clerk of the Board of Supervisors in File No. 161285 and are
16 incorporated herein by reference. It is anticipated that if this ordinance is enacted in
17 December 2016, the CTC will consider passage of the CTC Resolution in January 2017. After
18 passage of a resolution in substantial conformance with the CTC Resolution, the
19 relinquishment of Caltrans' right, title, and interest in and to the Van Ness Sidewalks to the
20 City shall become effective upon the recordation of a certified copy of the approved CTC
21 Resolution by the City Assessor-Recorder ("Effective Date of Sidewalk Relinquishment").
22

23 Section 2. Environmental and General Plan Findings.

24 (a) The Planning Department has determined that the actions contemplated in this
25 ordinance qualify for a categorical exemption under the California Environmental Quality Act

1 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
2 the Clerk of the Board of Supervisors in File No. 161285 and is incorporated herein by
3 reference. The Board of Supervisors adopts this determination as its own.

4 (b) In the above-referenced determination on file with the Clerk of the Board of
5 Supervisors in File No. 161285, the Planning Department also determined that the actions
6 contemplated in this ordinance are consistent, on balance, with the City's General Plan and
7 eight priority policies of Planning Code Section 101.1. The Board adopts this determination
8 as its own.

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10 Section 3. Authorizing Director of Property to Accept the Van Ness Sidewalks and
11 Underlying Real Property.

12 (a) Caltrans has offered to relinquish, without warranty, all of its right, title, and interest
13 in and to the Van Ness Sidewalks to the City, subject to Caltrans' reservation of an easement
14 granting Caltrans certain rights to construct, maintain, replace, remove, and renew existing
15 State-owned facilities located in the Van Ness Sidewalks, including electrical, signal, signage,
16 and other State Highway appurtenances, all subject to the City's ownership of the Van Ness
17 Sidewalks and the exercise of jurisdictional and permitting authority over the Van Ness
18 Sidewalks by the Department of Public Works ("Public Works").

19 (b) Caltrans' relinquishment of the Van Ness Sidewalks to the City will require
20 amendments to the Delegated Maintenance Agreement consistent with this ordinance and an
21 approved resolution that substantially conforms with the CTC Resolution.

22 (c) In DPW Order No. 185497, which is on file with the Clerk of the Board of
23 Supervisors in File No. 161285 and is incorporated by reference herein, Public Works has
24 recommended that the Board of Supervisors authorize the Director of Property to accept the
25 Van Ness Sidewalks and place the Van Ness Sidewalks in the jurisdiction of Public Works.

1 (d) In addition, in DPW Order No. 185497, Public Works has recommended that the
2 Board of Supervisors approve any amendments to the Delegated Maintenance Agreement
3 contemplated or required to conform with this ordinance and the approved CTC Resolution.

4 (e) In DPW Order No. 185497, Public Works has also recommended that the Board of
5 Supervisors authorize waiver of: (1) the requirement that Caltrans provide the City 90-days'
6 notice regarding the relinquishment of the Van Ness Sidewalks pursuant to California Streets
7 and Highways Code Section 73, and (2) all permit fees and bonding requirements associated
8 with construction work that Caltrans or its contractors perform in the Van Ness Sidewalks
9 following the Effective Date of Sidewalk Relinquishment.

10 (f) The Board of Supervisors hereby accepts and approves Public Works'
11 recommendation in DPW Order No. 185497 and authorizes: (1) waiver of the requirement that
12 Caltrans provide the City 90-days' notice regarding the relinquishment of the Van Ness
13 Sidewalks pursuant to California Streets and Highways Code Section 73, (2) the Director of
14 Property to accept all of Caltrans' right, title, and interest in and to the Van Ness Sidewalks
15 upon the CTC's approval of a resolution in substantial conformance with the CTC Resolution,
16 (3) the Director of Property to place the Van Ness Sidewalks in the jurisdiction of Public Works
17 upon the Effective Date of Sidewalk Relinquishment, and (4) the Director of Public Works to
18 amend the Delegated Maintenance Agreement as contemplated or required to conform with
19 this ordinance upon the Effective Date of Sidewalk Relinquishment.

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21 Section 4. Additional Requested Official Actions.

22 (a) In accordance with the recommendation of the Director of Public Works and the
23 Director of Property, the Board of Supervisors hereby authorizes the Director of Property to
24 accept all of Caltrans' right, title, and interest in and to the Van Ness Sidewalks and to enter
25 into any agreements, such as easement agreements, and agree to any waivers and

1 indemnities of the State of California that are determined to be appropriate by the Director of
2 Property in consultation with the City Attorney's Office in a form approved by the City
3 Attorney's Office.

4 (b) Upon acquisition of the Van Ness Sidewalks, the Board of Supervisors dedicates
5 the Van Ness Sidewalks for public use, designates these areas for street and roadway
6 purposes, and authorizes the placement of the Van Ness Sidewalks under Public Works'
7 jurisdiction.

8 (c) The Board of Supervisors excludes the Van Ness Sidewalks from City maintenance
9 and liability, and the liability, maintenance, and repair of said sidewalks shall remain the duty
10 of the owner of any property adjacent to the Van Ness Sidewalks to keep the Van Ness
11 Sidewalks in good repair and condition pursuant to the Municipal Code.

12 (d) Upon approval of this ordinance, the Clerk of the Board of Supervisors is hereby
13 authorized to send four certified copies of this ordinance to Caltrans at an address to be
14 provided by the Director of Public Works.

15 (e) Upon the CTC's approval of a resolution in substantial conformance with the CTC
16 Resolution, the Director of Property, on behalf of the City, is hereby authorized to and shall
17 accept and have recorded by the County Clerk, or shall agree to Caltrans' request for the
18 County Clerk's recordation of, a certified copy of the resolution approved by the CTC and one
19 or more relinquishment maps for the relinquishment of all of Caltrans' right, title, and interest
20 in and to the Van Ness Sidewalks to the City. In addition, upon the CTC's approval of a
21 resolution in substantial conformance with the CTC Resolution, the Director of Property, on
22 behalf of the City, is hereby authorized to take any and all steps (including, but not limited to
23 the execution and delivery of any and all deeds, leases, certificates, notices, consents,
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1 instructions, and documents) as the Director of Property, in consultation with the City
2 Attorney's Office, deems necessary or appropriate to consummate the relinquishment of all of
3 Caltrans' right, title, and interest in and to the Van Ness Sidewalks.

4 (f) Within 30 days of the Effective Date of Sidewalk Relinquishment, a copy of the
5 recorded CTC resolution shall be delivered to the Clerk of the Board of Supervisors.

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7 Section 5. Waiver of Permit Fees and Bonding Requirements. Notwithstanding any
8 contrary provision of the Public Works Code, for construction in the Van Ness Sidewalks that
9 Caltrans or its contractor(s) perform, the Board of Supervisors hereby waives: (a) all permit
10 fees associated with such work in the Van Ness Sidewalks, and (b) all bonding requirements.

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

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

19 By: _____
20 Christopher T. Tom
21 Deputy City Attorney

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