

1 [Street and Public Service Easement Vacation Order - Mission Rock Project]

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3 **Ordinance ordering the street vacation of the entirety of Seawall Lot 337 (located east**
4 **of Third Street between China Basin Channel and Mission Rock Street, including China**
5 **Basin Park) and portions of Terry A. Francois Boulevard along with public service**
6 **easements in connection with the Mission Rock Project; reserving various temporary**
7 **rights in favor of the City and PG&E, subject to conditions specified in this Ordinance;**
8 **authorizing official acts in connection with this Ordinance, as defined herein; adopting**
9 **findings under the California Environmental Quality Act; and making findings of**
10 **consistency with the General Plan, and the eight priority policies of Planning Code,**
11 **Section 101.1.**

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

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

20 Section 1. Findings.

21 (a) California Streets and Highways Code Sections 8300 et seq., and San
22 Francisco Public Works Code Section 787(a) set forth the procedures that the City and
23 County of San Francisco (the "City") follows to vacate public streets and public service
24 easements.

25 (b) On July 16, 2019, the City adopted Resolution No. 331-19 (the "Resolution of
Intention"), declaring the intention of the Board of Supervisors to vacate (1) the entirety of

1 Seawall Lot 337 (located east of Third Street between China Basin Channel and Mission Rock
2 Street, including China Basin Park); (2) portions of Terry A. Francois Boulevard adjacent to
3 Seawall Lot 337; and (3) public service easements located on Seawall Lot 337 and portions of
4 Terry A. Francois Boulevard adjacent to Seawall 337 (collectively, the “Vacation Area”). A
5 copy of said Resolution is on file with the Clerk of the Board in File No. 190652, and is
6 incorporated here by reference.

7 (c) The Vacation Area is shown in Public Works (“PW”) SUR Map No. 2019-002,
8 sheets 1 through 3. Copies of said maps are on file with the Clerk of the Board in File No.
9 190654 and are incorporated herein by reference.

10 (d) The Clerk of the Board of Supervisors did transmit to the Director of Public
11 Works (the “Director”) a certified copy of the Resolution of Intention, and the Director did
12 cause notice of adoption of such resolution to be posted in the manner required by law as
13 demonstrated by the affidavit of posting on file with the Clerk of the Board in File No. 190654.

14 (e) When such matter was considered as scheduled by the Board of Supervisors at
15 its regular meeting in the Legislative Chambers of City Hall, San Francisco, as specified in the
16 Resolution of Intention, on September 3, at 3:00 p.m., the Board of Supervisors heard public
17 testimony about the vacation of the Vacation Area.

18 (f) The vacation of the Vacation Area is necessary to implement the Mission Rock
19 mixed-use development project (“Project”), pursuant to the Development Agreement between
20 the City and Seawall Lot 337 Associates, LLC, approved by the City with the enactment of
21 Ordinance No. 33-18 on March 6, 2018, and the Disposition and Development Agreement
22 between the City, by and through the San Francisco Port Commission (“Port”), and Seawall
23 Lot 337 Associates, LLC, approved by the City on February 23, 2018 by Resolution No. 42-
24 18.

1 (g) On May 28, 2019, by SFPUC Resolution No. 19-0100, the San Francisco Public
2 Utilities Commission determined the City's interest in any easements located in the Vacation
3 Area to be excess. A copy of said Resolution is on file with the Clerk of the Board in File No.
4 190654, and incorporated herein by reference.

5 (h) This vacation does not limit the Port's ability, as the property owner, to allow
6 public access to Pier 48, Pier 50, or the waterfront, prior to the dedication and acceptance of
7 future Terry Francois Boulevard, which will establish permanent rights of public access
8 consistent with the future alignment of Terry Francois Boulevard.

9 (i) The Director prepared PW's Order No. 201299, dated June 4, 2019, (PW
10 "Order") regarding the vacations and other actions contemplated herein. In the PW Order, the
11 Director found that: (1) the City, acting through the Port, owns all of the property in and
12 adjacent to the Vacation Area; (2) the Port has consented to the proposed vacations; (3) the
13 proposed street vacations do not deprive any private landowner of access to the built public
14 street grid; (4) the Vacation Area is currently no longer necessary for the City's present or
15 prospective public street and sidewalk purposes; (5) due to public convenience and necessity,
16 the public service easements and the in-place public utilities located within the public service
17 easements are no longer necessary for public purposes, and therefore, the public service
18 easements should be vacated, subject to the reservation of certain temporary rights set forth
19 in this ordinance; and (6) in accordance with California Streets and Highways Code Sections
20 892 and 8314, the rights-of-way and parts thereof proposed for vacation are currently no
21 longer useful as a non-motorized transportation facility, as defined in Streets and Highways
22 Code Section 887. A copy of the PW Order No. 201299, is on file with the Clerk of the Board
23 in File No. 190654, and incorporated herein by reference.

24 (j) The Director also determined that the public interest, convenience, and
25 necessity require that the City reserve from the vacation of the Vacation Area rights for City

1 utilities located in, upon, or over the areas identified as CITY-1 and CITY-2 (each an “Existing
2 City Facility”) in PW SUR Map. No. 2019-002, to the extent necessary to maintain, operate,
3 repair, and remove lines of pipe, conduits, cables, wires, poles, and other convenient
4 structures, equipment and fixtures for the operation of City utilities. The Director
5 recommended that such rights should terminate, in whole or in part, upon the earliest of the
6 following, as applied to each Existing City Facility: (1) the City’s acceptance of a new
7 dedicated public street (or streets) in the same location in which such Existing City Facilities
8 are located, or (2) the Director’s determination that the area being served by the Existing City
9 Facility no longer requires such service.

10 (k) The Director further determined that the public interest, convenience, and
11 necessity require that the City reserve from the vacation of the Vacation Area temporary non-
12 exclusive rights in favor of PG&E for certain in-place, and functioning, electric and gas
13 facilities, located in, upon, or over the areas identified as PG&E-1, PG&E-2, PG&E-3, PG&E-
14 4, PG&E-5, PG&E-6, and PG&E-7 (each an “Existing PG&E Facility”) on PW SUR Map No.
15 2019-002, to the extent necessary to maintain, operate, repair, and remove existing lines of
16 pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures
17 for the operation of the Existing PG&E Facilities. The Director recommended that such rights
18 should terminate, in whole or in part, upon the earliest of the following, as applied to each
19 individual Existing PG&E Facility: (1) the City’s acceptance of a new dedicated public street
20 (or streets) in the same location in which such Existing PG&E Facility is located, or (2) the
21 determination by the Director, in consultation with the Port, that the area served by an Existing
22 PG&E Facility no longer requires such service and either (A) PG&E has removed or
23 abandoned the relevant Existing PG&E Facility or (B) following a request to terminate service,
24 PG&E has failed to remove or abandon said facilities within 90 days of a written request from
25 the Director.

1 (l) Based on the findings in the PW Order, the Director recommended that the
2 Board of Supervisors adopt the legislation to vacate the Vacation Area as shown on SUR Map
3 No. 2019-002. The Board of Supervisors adopts as its own, the recommendations of the
4 Director in PW Order No 201299, concerning the vacation of the Vacation Area, reservation of
5 temporary rights for public utilities, and other actions in furtherance thereof.

6 (m) On October 5, 2017, the Planning Commission, by Motion No. 20017, certified
7 the Final Environmental Impact Report (“Final EIR”) for the Mission Rock Project as being
8 accurate, complete, and in compliance with the California Environmental Quality Act
9 (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines, and
10 Chapter 31 of the Administrative Code. At the same hearing, the Planning Commission, by
11 Resolution No. 20018, adopted findings with respect to the approval of the Project (“CEQA
12 Findings”). These CEQA Findings include the rejection of alternatives, a statement of
13 overriding considerations, and a mitigation monitoring and reporting program among other
14 administrative record documents.

15 (n) The Board of Supervisors in Resolution No. 36-18, adopted by the City on
16 February 23, 2018, adopted these CEQA Findings as its own. Copies of said motion,
17 resolutions, and ordinance are on file with the Clerk of the Board of Supervisors in File No.
18 171286, and are incorporated herein by reference.

19 (o) The Board of Supervisors further finds: (1) the actions proposed for approval
20 under this ordinance were contemplated as part of the Final EIR and present no substantial
21 changes to the Project that will require major revisions in the Final EIR due to the involvement
22 of new significant environmental effects or a substantial increase in the severity of previously
23 identified significant effects; (2) the actions proposed for approval under this ordinance
24 present no substantial changes with respect to the circumstances under which the Project
25 was approved that will require major revisions to the Final EIR due to the involvement of new

1 significant environmental effects or a substantial increase in the severity of previously
2 identified significant effects; (3) no new information of substantial importance, which was not
3 known and could not have been known in the exercise of reasonable diligence at the time the
4 Final EIR was certified, has become available which indicates that: (A) the Project will have
5 significant effects not discussed in the Final EIR, (B) significant environmental effects will be
6 substantially more severe than shown in the Final EIR, (C) mitigation measures or alternatives
7 found not to be feasible would in fact be feasible, and would substantially reduce one or more
8 significant effects of the Project, or (D) mitigation measures or alternatives which are
9 considerably different from those in the Final EIR would substantially reduce one or more
10 significant effects on the environment.

11 (p) As a consequence of the above findings, the Board of Supervisors relies on the
12 CEQA Findings adopted in Resolution No. 36-18 for purposes of the actions in this ordinance.

13 (q) In a letter dated January 30, 2019, the City Planning Department determined
14 that the proposed vacation and other actions contemplated herein are consistent with the
15 General Plan and with the Eight Priority Policies of City Planning Code Section 101.1. A copy
16 of said letter is on file with the Clerk of the Board in File No. 190654, and is incorporated by
17 reference herein. The Board of Supervisors adopts as its own the consistency findings in the
18 letter.

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20 Section 2. Ordering Street and Public Service Easement Vacation.

21 (a) The Board of Supervisors approves the recommendations and findings in PW
22 Order No. 201299 and hereby vacates the Vacation Area, as shown on PW SUR Map No.
23 2019-002, pursuant to California Streets and Highways Code Sections 8300 et seq. and
24 Public Works Code Section 787(a), and upon satisfaction of the terms, conditions, and
25 reservations as set forth in this ordinance.

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

3 (c) The public interest, convenience, and necessity require that the vacation be
4 done as declared in this ordinance.

5 (d) On recordation of this ordinance, the vacation shall be effective without any
6 further action by the Board. No quitclaim deeds are required to effectuate the vacation.

7
8 Section 3. Reservation of Temporary Rights for Public Utilities.

9 (a) The vacation of the Vacation Area is subject to the reservation of temporary
10 rights for the Existing City Facilities located in, upon, or over the areas identified as CITY-1
11 and CITY-2 in PW SUR Map. No. 2019-002, to the extent necessary to maintain, operate,
12 repair, and remove existing lines of pipe, conduits, cables, wires, poles, and other convenient
13 structures, equipment, and fixtures for the operation of existing City utilities. These temporary
14 rights shall terminate, in whole or in part, upon the earliest of the following, as applied to each
15 Existing City Facility: (1) the City's acceptance of a new dedicated public street (or streets) in
16 place of any of the property in which such Existing City Facilities are located or (2) the
17 Director's determination that the area being served by the Existing City Facilities no longer
18 requires such service. Upon the Port (or other fee title holder) demonstrating that one of the
19 aforementioned conditions has been satisfied, the City shall record a notice against the
20 subject property stating that the temporary right has terminated, in whole or in part, as
21 applicable.

22 (b) The vacation of the Vacation Area is subject to the additional reservation of
23 temporary non-exclusive rights for the Existing PG&E Facilities located in, upon, or over the
24 areas identified as PGE-1 through PGE-7 on SUR Map No. 2019-002, to the extent necessary
25 to maintain, operate, repair, and remove existing lines of pipe, conduits, cables, wires, poles,

1 and other convenient structures, equipment and fixtures for the operation of the Existing
2 PG&E Facilities. These temporary rights shall terminate, in whole or in part, upon the earliest
3 of the following as applied to each individual Existing PG&E Facility: (1) the City's acceptance
4 of a new dedicated public street (or streets) in the same location in which such Existing PG&E
5 Facilities are located, or (2) the determination by the Director, in consultation with the Port,
6 that the area served by the Existing PG&E Facility no longer requires such service and either
7 (A) PG&E has removed or abandoned the relevant Existing PG&E Facility or (B) following a
8 request to terminate service, PG&E has failed to remove or abandon said facilities within 90
9 days of a written request from the Director. Upon the Port (or other fee title holder)
10 demonstrating that one of the aforementioned conditions has been satisfied, the City shall
11 record a notice of termination against the subject property stating that the temporary right has
12 terminated, in whole or in part, as applicable.

13 (c) Except as specifically provided in this ordinance, no easements or other rights
14 are reserved for any public utility facilities that are in place in the Vacation Area and any rights
15 based upon any such public utility facilities shall be extinguished upon the effectiveness of the
16 vacation hereunder.

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18 Section 4. Official Acts in Connection with the Ordinance.

19 (a) The Board of Supervisor authorizes the Clerk of the Board, the Port Executive
20 Director, the Director of the Real Estate Division, the County Surveyor, the General Manager
21 of the Public Utilities Commission and the Director of Public Works to take any and all actions
22 which they or the City Attorney may deem necessary or advisable to effectuate the purpose
23 and intent of this ordinance, including, without limitation, the filing of this ordinance in the
24 Official Records of the City and County of San Francisco, confirmation of the satisfaction of
25 the conditions to the effectiveness of the vacation of the Vacation Area, and execution and

1 delivery of any evidence of the same, which shall be conclusive as to the satisfaction of the
2 conditions.

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4 Section 5. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11
12 By: _____
13 AUSTIN M. YANG
14 Deputy City Attorney

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