

1 [Public Works Code - Major Encroachment Permit - 3333 California Street Project]

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3 **Ordinance approving a major encroachment permit for Laurel Heights Partners, LLC**
 4 **(“Permittee”) to occupy portions of Presidio Avenue, Masonic Avenue, Pine Street,**
 5 **Euclid Avenue, Mayfair Drive, and Laurel Street adjacent to 3333 California Street**
 6 **(Assessor’s Parcel Block No. 1032, Lot No. 003) for the purpose of installing and**
 7 **maintaining landscape planters, differentiated paving, corner bulb-outs, and other**
 8 **improvements; waiving conflicting requirements under Public Works Code, Sections**
 9 **800 et seq. and 810A, in connection with Permittee’s implementation of the**
 10 **encroachment permit and project development; making findings under the California**
 11 **Environmental Quality Act; and making findings of consistency with the General Plan,**
 12 **and the eight priority policies of Planning Code, Section 101.1.**

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

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

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20 Section 1. Environmental and Land Use Findings.

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22 (a) At its duly noticed public hearing on September 5, 2019, in Motion No. 20512, the
 23 Planning Commission certified a Final Environmental Impact Report (“FEIR”) for the 3333
 24 California development project (the “Project”) pursuant to the California Environmental Quality
 25 Act (“CEQA”) (California Public Resources Code Section 21000 et seq.), the CEQA
 Guidelines (14 Cal. Code Reg. Sections 15000 et seq.) and Chapter 31 of the Administrative

1 Code. On this same date, in Motion No. 20513, the Planning Commission adopted findings
2 under CEQA (“CEQA Findings”) in regard to the Project decisions, including a statement of
3 overriding considerations and a mitigation monitoring and reporting program (“MMRP”). In
4 accordance with the actions contemplated in this ordinance, the Board of Supervisors has
5 reviewed the FEIR and concurs with its conclusions, and finds that the actions contemplated
6 herein are within the scope of the Project described and analyzed in the FEIR. The Board
7 hereby adopts the Commission's CEQA findings and MMRP as its own. The Planning
8 Commission Motions certifying the FEIR and adopting CEQA Findings and the MMRP are on
9 file with the Clerk of the Board of Supervisors in File No. 190947 and incorporated herein by
10 reference.

11 (b) In addition, on September 5, 2019, the Planning Commission conducted a duly
12 noticed public hearing on the Project, including a Development Agreement and Planning Code
13 and Zoning Map amendments, and by Resolution Nos. 20514 and 20515 recommended these
14 actions for approval. As part of its decision, the Planning Commission found that the major
15 encroachment permit that is the subject of this ordinance was, on balance, consistent with the
16 City’s General Plan as it is proposed to be amended and with Planning Code Section 101.1(b)
17 for the reasons set forth in Planning Commission Resolution Nos. 20514 and 20515. The
18 Board of Supervisors adopts these findings as its own. Copies of said Motions are on file with
19 the Clerk of the Board of Supervisors in File No. 190947 and are incorporated herein by
20 reference.

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22 Section 2. Background and Additional Findings.

23 (a) Pursuant to Public Works Code Sections 786 et seq., Laurel Heights Partners LLC,
24 a Delaware limited liability company (hereafter referred to as “Permittee”), requested a major
25 encroachment permit to occupy an approximately 14,400 square foot portion of the public

1 right-of-way to install and maintain: corner bulb-outs to increase pedestrian safety;
2 improvements related to the Pine Street Stairs and Walnut Walk that allow for pedestrian
3 access to the site; and landscaped planters and differentiated paving in certain areas of the
4 sidewalk (collectively, the “Encroachments”). The Encroachments would occur on Presidio
5 Avenue, Masonic Avenue, and Pine Street; Euclid Avenue and Masonic Avenue; and Mayfair
6 Drive and Laurel Street adjacent to 3333 California Street (Assessor’s Parcel Block No. 1032,
7 Lot No. 003).

8 (b) The Encroachments specifically include the following: (1) the corner of Presidio
9 Avenue, Masonic Avenue and Pine Street relating to the Pine Street Stairs, landscape
10 planters, and a corner bulb-out; (2) the corner of Masonic Avenue and Euclid Avenue for
11 landscape planters, a corner bulb-out, and differentiated paving as part of Walnut Walk, and
12 (3) the corner of Mayfair Drive and Laurel Street for a corner bulb-out with differentiated
13 paving. A plan of the Encroachments is on file with the Clerk of the Board of Supervisors in
14 File No. 190947 and incorporated herein by reference.

15 (c) The Permittee will construct the Encroachments in conjunction with the 3333
16 California Street project on a phase by phase basis, and the Permittee shall maintain the
17 Encroachments for the life of the permit.

18 (d) In conjunction with the installation of the Encroachments, the Permittee will
19 undertake additional street improvements to increase sidewalk widths around the perimeter of
20 the project in accordance with plans on file with the Clerk of the Board of Supervisors in File
21 No. 190947.

22 (e) The Board of Supervisors acknowledges that such sidewalk width changes qualify
23 for administrative approval in accordance with Ordinance No. 34-12. A copy of this Ordinance
24 is on file with the Clerk of the Board of Supervisors in File No. 111281.

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1 (f) The Board of Supervisors approval of the major encroachment permit also
2 authorizes removal of 15 street trees (as defined in Public Works Code Section 802) along
3 California Street between Laurel Street and Presidio Avenue and 19 significant trees (as
4 defined in Public Works Code Section 810A) along California Street, Masonic Avenue,
5 Presidio Avenue, and Laurel Street. The encroachment permit requires replacement of 88
6 street trees and 49 significant trees and payment of the tree removal in lieu fee for 12 trees,
7 all in accordance with Public Works Code Sections 800 et seq. (Urban Forestry Ordinance)
8 and 810A (Significant Trees).

9 (g) The Transportation Advisory Staff Committee, a City multi-agency review body
10 chaired by the San Francisco Municipal Transportation Agency, at its meeting of September
11 12, 2019, recommended approval of the proposed encroachments.

12 (h) After a duly noticed public hearing on September 18, 2019, the Director of Public
13 Works ("PW") recommended in PW Order No. 202030, dated October 16, 2019, that the
14 Board of Supervisors approve a major encroachment permit and associated maintenance
15 agreement (collectively, the "Permit") for the construction and maintenance of the
16 Encroachments, the street and significant tree removal and replacement described above in
17 subsection (f), and related sidewalk width expansion. A copy of the PW Order is on file with
18 the Clerk of the Board of Supervisors in File No. 190947 and is incorporated herein by
19 reference.

20 (i) In Public Works Order No. 202030, the Director also determined under Public
21 Works Code Section 786.7(f)(3) that because the Encroachments provide a public benefit as
22 contemplated in the Project's Development Agreement approved in companion legislation on
23 file with the Clerk of the Board of Supervisors in File No. 190845, the project qualifies for a
24 public right-of-way occupancy assessment fee waiver.

1 Section 3. Requirements for the Major Encroachment Permit.

2 (a) The final approved Permit shall be in substantially the same form as that in the
3 Clerk of the Board of Supervisor's file. The Permit is on file with the Clerk of the Board of
4 Supervisors in File No. 190947 and incorporated herein by reference.

5 (b) The Permit for the Encroachments shall not become effective until:

6 (1) The Permittee executes and acknowledges the Permit and delivers said
7 Permit and all required documents and fees to Public Works, and

8 (2) Public Works records the Permit in the County Recorder's Office.

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

11 (1) To provide for the support and protection of City-owned facilities under the
12 jurisdiction of Public Works, the San Francisco Public Utilities Commission, the Fire
13 Department, other City Departments, and public utility companies;

14 (2) To provide access to such facilities to allow said entities to construct,
15 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit;

16 (3) To remove or relocate such facilities if installation of Encroachments
17 requires said removal or relocation and to make all necessary arrangements with the owners
18 of such facilities, including payment for all their costs, should said removal or relocation be
19 required; and

20 (4) The Permittee shall assume all costs for the maintenance and repair of the
21 Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
22 Public Works or any other City department by reason of this permission granted.

23 (d) No structures shall be erected or constructed within the public right-of-way except
24 as specifically authorized in the Permit.

1 Section 4. Major Encroachment Permit Approval.

2 (a) Pursuant to Public Works Code Sections 786 et seq., the Board of Supervisors
3 hereby grants revocable, personal, non-exclusive, and non-possessory permission to the
4 Permittee, Laurel Heights Partners LLC, a Delaware limited liability company, to occupy the
5 public right-of-way with the Encroachments and maintain said Encroachments under the
6 terms of the Permit.

7 (b) The Board of Supervisors accepts the recommendations of PW Order No. 202030
8 and approves the Permit with respect to the Encroachments, the street and significant tree
9 removal and replacement, and related sidewalk width expansion. The Board also authorizes
10 the Director of Public Works to perform and exercise the City's rights and obligations with
11 respect to the Encroachments under the Permit and to enter into amendments or
12 modifications to the Permit with respect to the Encroachments subject to the limitations set
13 forth below. The authorized amendments and modifications are those that the Director of
14 Public Works, in consultation with the City Attorney, determines are in the best interest of the
15 City, do not materially increase the obligations or liabilities of the City or materially decrease
16 the obligations of the Permittee or its successors, are necessary or advisable to effectuate the
17 purposes of the Permit or this ordinance with respect to the Encroachments, and are in
18 compliance with all applicable laws.

19 (c) The Board of Supervisors acknowledges waiver of the public right-of-way
20 occupancy assessment fee in accordance with the Public Works Director's determination
21 under Public Works Code Section 786.7(f)(3) regarding a Development Agreement project.

22 (d) Notwithstanding any conflicting provisions of Public Works Code Sections 800 et
23 seq. (Urban Forestry Ordinance) and 810A (Significant Trees), the Board of Supervisors
24 determines that Public Works followed adequate procedures for public notice, public hearing,
25 and street and significant tree removal and replacement requirements and hereby approves

1 the tree removal and replacement program as part of the Permit under Public Works Code
2 Sections 786 et seq. Any conflicting provisions of Public Works Code Sections 800 et seq.
3 (Urban Forestry Ordinance) and 810A (Significant Trees) do not apply and are hereby waived.

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5 Section 5. Effective Date; Operative Date.

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

10 (b) This ordinance shall become operative on (and no rights or duties are affected
11 until) the later of (1) its effective date, specified in subsection (a), or (2) the effective date of
12 the ordinance approving the Development Agreement for the Project, which ordinance is on
13 file with the Clerk of the Board of Supervisors in File No. 190845.

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

17 By: _____
18 JOHN D. MALAMUT
19 Deputy City Attorney

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