

1 [Public Works Code - Major Encroachment Permit for the 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.

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

20 Section 1. Environmental and Land Use Findings.

21 (a) At its duly noticed public hearing on September 5, 2019, in Motion No. 20512, the
22 Planning Commission certified a Final Environmental Impact Report (“FEIR”) for the 3333
23 California development project (the “Project”) pursuant to the California Environmental Quality
24 Act (“CEQA”) (California Public Resources Code Section 21000 et seq.), the CEQA
25 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, and adopts the
8 supplemental CEQA findings on file with the Clerk of the Board of Supervisors in File No.
9 190947. The Planning Commission Motions certifying the FEIR and adopting CEQA Findings
10 and the MMRP are on file with the Clerk of the Board of Supervisors in File No. 190947 and
11 incorporated herein by reference.

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

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23 Section 2. Background and Additional Findings.

24 (a) Pursuant to Public Works Code Sections 786 et seq., Laurel Heights Partners LLC,
25 a Delaware limited liability company (hereafter referred to as “Permittee”), requested a major

1 encroachment permit to occupy an approximately 14,400 square foot portion of the public
2 right-of-way to install and maintain: corner bulb-outs to increase pedestrian safety;
3 improvements related to the Pine Street Stairs and Walnut Walk that allow for pedestrian
4 access to the site; and landscaped planters and differentiated paving in certain areas of the
5 sidewalk (collectively, the “Encroachments”). The Encroachments would occur on Presidio
6 Avenue, Masonic Avenue, and Pine Street; Euclid Avenue and Masonic Avenue; and Mayfair
7 Drive and Laurel Street adjacent to 3333 California Street (Assessor’s Parcel Block No. 1032,
8 Lot No. 003).

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

16 (c) The Permittee will construct the Encroachments in conjunction with the 3333
17 California Street project on a phase by phase basis, and the Permittee shall maintain the
18 Encroachments for the life of the permit; provided, however, that for purposes the Project's
19 street trees, the Permittee shall be responsible for the three year establishment period under
20 Public Works Code Section 805(a)(1)(A) and Maintenance (as defined in Public Works Code
21 Section 802) for an additional three year period pursuant to the terms of a voluntary street tree
22 maintenance agreement with Public Works under Sections 805(a)(1)(B) and 805(c) of the
23 Public Works Code. Such voluntary agreement shall include language that provides for the
24 possibility of further extending Permittee's additional Maintenance period.

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

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

8 (f) The Board of Supervisors approval of the major encroachment permit also
9 authorizes removal of 15 street trees (as defined in Public Works Code Section 802) along
10 California Street between Laurel Street and Presidio Avenue and ~~49~~18 significant trees (as
11 defined in Public Works Code Section 810A) along California Street, Masonic Avenue,
12 Presidio Avenue, and Laurel Street. The encroachment permit requires replacement of 88
13 street trees and 49 significant trees and payment of the tree removal in lieu fee for 12 trees,
14 all in accordance with Public Works Code Sections 800 et seq. (Urban Forestry Ordinance)
15 and 810A (Significant Trees).

16 (g) The Transportation Advisory Staff Committee, a City multi-agency review body
17 chaired by the San Francisco Municipal Transportation Agency, at its meeting of September
18 12, 2019, recommended approval of the proposed encroachments.

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

1 reference.

2 (i) In Public Works Order No. 20203, the Director also determined under Public Works
3 Code Section 786.7(f)(3) that because the Encroachments provide a public benefit as
4 contemplated in the Project's Development Agreement approved in companion legislation on
5 file with the Clerk of the Board of Supervisors in File No. 190845, the project qualifies for a
6 public right-of-way occupancy assessment fee waiver.

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8 Section 3. Requirements for the Major Encroachment Permit.

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

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

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

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

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

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

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

23 (3) To remove or relocate such facilities if installation of Encroachments
24 requires said removal or relocation and to make all necessary arrangements with the owners
25 of such facilities, including payment for all their costs, should said removal or relocation be

1 required; and

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

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

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8 Section 4. Major Encroachment Permit Approval.

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

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

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

4 (d) Notwithstanding any conflicting provisions of Public Works Code Sections 800 et
5 seq. (Urban Forestry Ordinance) and 810A (Significant Trees), the Board of Supervisors
6 determines that Public Works followed adequate procedures for public notice, public hearing,
7 and street and significant tree removal and replacement requirements and hereby approves
8 the tree removal and replacement program as part of the Permit under Public Works Code
9 Sections 786 et seq. Any conflicting provisions of Public Works Code Sections 800 et seq.
10 (Urban Forestry Ordinance) and 810A (Significant Trees) do not apply and are hereby waived.

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12 Section 5. Effective Date; Operative Date.

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

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

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 JOHN D. MALAMUT
25 Deputy City Attorney

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