

1 [Street Vacation - Millennium Tower 301 Mission Perimeter Pile Upgrade Project]

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3 **Ordinance ordering the vacation of the sidewalk portion of streets on the south side of**  
4 **Mission Street at the intersection of Mission and Fremont Streets and on the east side**  
5 **of Fremont Street at the same intersection to allow a structural upgrade of the 301**  
6 **Mission Street high-rise building known as Millennium Tower, subject to certain**  
7 **conditions; rededicating the area subject to the street vacation to public use for street**  
8 **and right-of-way purposes after the City's issuance of an easement for the**  
9 **abovementioned structural upgrade; adopting environmental findings under the**  
10 **California Environmental Quality Act; adopting findings that the vacation and**  
11 **rededication of the street area are consistent with the General Plan, and the eight**  
12 **priority policies of Planning Code, Section 101.1; and authorizing actions in**  
13 **furtherance of this Ordinance.**

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

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

22 Section 1. Environmental and General Plan Findings.

23 (a) On November 20, 2019, the Planning Department published a Preliminary  
24 Mitigated Negative Declaration ("PMND") for the 301 Mission Street, Millennium Tower  
25 Perimeter Pile Upgrade Project (the "Project"). The PMND found that although the Project  
could have potentially significant impacts on the environment, such impacts will be reduced to

1 a less than significant level because Millennium Tower Association (the "Project Sponsor") will  
2 implement all mitigation measures identified in the PMND. The Planning Department  
3 prepared and publicized the PMND in compliance with the provisions of the California  
4 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.,  
5 "CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Sections 15000  
6 et seq.), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

7 (b) On December 27, 2019, following the required notice and appeal period, the  
8 Planning Department published a Final Mitigated Negative Declaration ("FMND"), a copy of  
9 which is on file with the Clerk of the Board of Supervisors in File No. 191253 and incorporated  
10 herein by reference.

11 (c) In a letter dated December 27, 2019 (the "General Plan Referral Letter"), the  
12 Planning Department determined that the street vacation and rededication of the area subject  
13 to the street vacation as public use for street and right-of-way purposes are, on balance,  
14 consistent with the General Plan and with the eight priority policies of Planning Code Section  
15 101.1. A copy of said letter is on file with the Clerk of the Board of Supervisors in File No.  
16 191253 and is incorporated herein by reference. The Board of Supervisors adopts as its own  
17 the consistency findings of the General Plan Referral Letter for purposes of this ordinance.

18 (d) As part of its determination on the General Plan, the Planning Department  
19 reviewed and considered the FMND. As part of the General Plan Referral Letter, the Planning  
20 Department adopted CEQA Findings and the proposed mitigation monitoring and reporting  
21 program (collectively, "CEQA Findings") as required by State and local law. The Board of  
22 Supervisors hereby adopts and incorporates by reference the CEQA Findings. In so doing,  
23 the Board of Supervisors approves and endorses the mitigation monitoring and reporting  
24 program for implementation by other City departments. A copy of the CEQA Findings and the  
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1 mitigation monitoring and reporting program is on file with the Clerk of the Board of  
2 Supervisors in File No. 191253 and is incorporated herein by reference.

3 (e) The Board of Supervisors finds that the actions taken in this ordinance are within  
4 the scope of the Project analyzed in the FMND and subject to the CEQA Findings. The Board  
5 of Supervisors further finds that (1) no substantial changes are proposed in the Project and no  
6 substantial changes have occurred with respect to the circumstances under which this Project  
7 will be undertaken that would cause new significant environmental effects or a substantial  
8 increase in the severity of previously identified effects and (2) there is no new information of  
9 substantial importance showing that the Project would have any significant effects not  
10 discussed in the FMND, that significant effects would be substantially more severe, or that  
11 new or different mitigation measures or alternatives would substantially reduce one or more  
12 significant effects of the Project.

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14 Section 2. Background and General Findings.

15 (a) The Project is associated with the 50,500-square-foot (1.16-acre) parcel  
16 (Assessor's Parcel Block No. 3719, Lots 020–440) at 301 Mission Street located on the south  
17 side of Mission Street between Fremont and Beale streets within San Francisco's Financial  
18 District (the "Property"). The existing high-rise on the 301 Mission Street parcel is called the  
19 Millennium Tower. The Tower building covers a footprint of approximately 32,960 square feet  
20 and its foundation system consists of a 10-foot-thick reinforced concrete mat foundation.

21 (b) In accordance with information provided by the Project Sponsor, since completion  
22 of construction of the Tower in 2009, the area around the Tower and Property has  
23 experienced differential settlement due to consolidation and compression of the soil layer  
24 beneath the Colma Sand, which is known as Old Bay Clay, and tilting to the northwest near  
25 the corner of Mission and Fremont Streets.

1 (c) The Project consists of a structural upgrade of the Tower building foundation that  
2 includes installation of a horizontal extension of the existing mat foundation for the Tower  
3 building within an approximately 8-foot-wide zone beneath the public right-of-way sidewalk  
4 area and immediately adjacent to the Tower along Fremont and Mission Streets, supported by  
5 52 new piles extending to bedrock. The 52 new piles are referred to as “perimeter piles” and  
6 the extended mat foundation is referred to as the “collar foundation.” In addition to preventing  
7 further settlement in the northwest corner of the Tower’s existing foundation, the Project  
8 Sponsor has stated that this effort may allow for gradual tilt correction of the Tower building  
9 over time.

10 (d) The Project Sponsor will stage construction activities adjacent to the Property  
11 along Fremont, Mission, and Beale Streets, requiring the closure of one travel lane and  
12 sidewalks along Fremont and Mission Streets and restricting pedestrian access on the  
13 sidewalk along Beale Street during portions of construction. There would be limited or no  
14 pedestrian access along the Fremont and Mission Streets sides of the Tower during the  
15 entirety of construction, because the structural upgrade construction would occur in the  
16 sidewalk area; however, after completion of the structural upgrade, the Project Sponsor would  
17 restore the site and sidewalk area to pre-construction conditions.

18 (e) The permanently installed perimeter piles and collar foundation would occupy a  
19 portion of current public right-of-way on Mission and Fremont Streets that is subject to the  
20 public trust doctrine, which designation would be removed by a State Trust exchange  
21 agreement approved by the California State Lands Commission, the San Francisco Port  
22 Commission, and this Board of Supervisors (“Public Trust Exchange”). The Public Trust  
23 Exchange is addressed in a companion ordinance that is on file with the Clerk of the Board of  
24 Supervisors in File No. 191286. The vacation of the Vacation Area authorized by this  
25 ordinance is conditioned upon the Public Trust Exchange being final and effective.

1 (f) The street vacation proceeding associated with the Project is for the sidewalk  
2 portions of Mission Street and Fremont Street near the Mission and Fremont Streets  
3 intersection (collectively, the “Vacation Area”) and identified more particularly on the Public  
4 Works (“PW”) SUR Map No. 2019-006, dated January 8, 2020 (the “SUR Map”). A copy of  
5 the SUR Map is on file with the Clerk of the Board of Supervisors in File No. 191253 and  
6 incorporated herein by reference. The Assessor’s Office has assigned Assessor’s Parcel  
7 Block No. 3719, Lot 519, to the Mission Street portion and Assessor’s Parcel Block No. 3719,  
8 Lot 520, to the Fremont Street portion of the Vacation Area.

9 (g) The street vacation would allow a portion of the Vacation Area to be permanently  
10 occupied by the Project in accordance with the terms of an easement that the City and County  
11 of San Francisco proposes grant to the Project Sponsor (the “301 Mission Street Easement”  
12 or “Easement”).

13 (h) The Board of Supervisors will consider the grant of the 301 Mission Street  
14 Easement in a companion resolution on file with the Clerk of the Board of Supervisors in File  
15 No. \_\_\_\_\_.

16 (i) The City is prohibited from granting a non-revocable permit or easement over the  
17 public right-of-way unless the subject area is vacated in accordance with the California Streets  
18 and Highways Code Sections 8300 et seq. and Public Works Code Section 787.

19 Consequently, in order to accommodate the Project and grant the 301 Mission Street  
20 Easement, the City will need to temporarily vacate the Vacation Area prior to granting such  
21 Easement. Once the street vacation occurs and the Easement is granted and recorded, the  
22 City intends to restore the street status on the Vacation Area so it will continue in its current  
23 form as a dedicated public right-of-way. Therefore, when the 301 Mission Street Easement is  
24 effective and recorded, the Vacation Area will be rededicated to public use for street and right-  
25 of-way purposes subject to the Easement.

1 (j) The Board of Supervisors also will consider the settlement of litigation related to 301  
2 Mission Street that comprised of all complaints and associated cross-claims and cross-  
3 complaints coordinated and/or consolidated under the case entitled, *Laura S. Lehman v.*  
4 *Transbay Joint Powers Authority, et al.*, Case Number CGC-16-553758 in the Superior Court  
5 of San Francisco in a companion ordinance (the "Settlement Ordinance"). But for this  
6 settlement, the Board of Supervisors would not undertake this street vacation or the  
7 companion resolution for the 301 Mission Street Easement. Consequently, the street vacation  
8 ordinance will not be operative until the Settlement Ordinance is final and effective. The  
9 Settlement on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

10 (k) The Public Works ("PW") Director has prepared PW Order No. 202465, dated  
11 January 8, 2020, in regard to the vacation and other actions contemplated herein and has  
12 made the following determinations: (1) the Vacation Area shown in SUR Map 2019-006 will no  
13 longer be necessary for the City's present or prospective future public street, sidewalk, and  
14 public service easement purposes on a temporary basis until the City approves the grant of  
15 the 301 Mission Street Easement to the Project Sponsor for the Project and said easement is  
16 recorded; (2) concurrent with recordation of the 301 Mission Street Easement, the Vacation  
17 Area should be rededicated to public use for street and right-of-way purposes subject to the  
18 Easement in order to restore the existing street use status to the Vacation Area; (3) in  
19 accordance with California Streets and Highways Code Section 892, the Vacation Area will  
20 not be useful as a nonmotorized transportation facility, as defined in Streets and Highways  
21 Code Section 887, because the entire Vacation Area is below grade; (4) the public interest,  
22 convenience, and necessity require that the street vacation occur as contemplated to protect  
23 the public safety and allow for the Project to be implemented; and (5) it is a policy matter for  
24 the Board of Supervisors to grant the 301 Mission Street Easement over the City's interest in  
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1 the Vacation Area to the Project Sponsor. A copy of the PW Order is on file with the Clerk of  
2 the Board of Supervisors in File No. 191253 and is incorporated herein by reference.

3 (l) In addition, the PW Director, in PW Order No. 202465, recommended: (1) that the  
4 Board of Supervisors adopt the legislation to vacate the Vacation Area; (2) that the Board of  
5 Supervisors authorize the Mayor, Clerk of the Board of Supervisors, Director of Property,  
6 County Surveyor, and PW Director to take any and all actions which they or the City Attorney  
7 may deem necessary or advisable in order to effectuate the purpose and intent of this  
8 ordinance; and (3) that the operative date of the street vacation be conditioned upon the  
9 following: (i) the Public Trust Exchange being final and effective and (ii) the Settlement  
10 Ordinance being final and effective.

11 (m) On \_\_\_\_\_, 2020, the Board of Supervisors adopted Resolution No.  
12 \_\_\_\_\_ (the "Resolution of Intent"), which declared the intention of the Board to  
13 conditionally vacate the Vacation Area. A copy of this resolution is on file with the Clerk of the  
14 Board of Supervisors in File No. 191252 and incorporated herein by reference.

15 (n) The Clerk of the Board of Supervisors published the Resolution of Intent in the  
16 manner required by law and transmitted to the PW Director a certified copy of the Resolution  
17 of Intent, and the PW Director posted the Resolution of Intent in the manner required by law.

18 (o) The vacation actions contemplated by this ordinance are conducted under the  
19 general vacation procedures of the Public Streets, Highways and Service Easements  
20 Vacation Law (California Streets and Highways Code Sections 8300 et seq.) and Public  
21 Works Code Section 787(a).

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25 Section 3. Street Vacation and Conditions.

1 (a) Except as set forth in subsection (d), the Board of Supervisors hereby adopts the  
2 findings, determinations, and recommendations of PW Order No. 202465 and temporarily  
3 vacates the Vacation Area, as shown on the SUR Map No. 2019-006, in the manner  
4 described in Section (2)(k) and (l) of this ordinance, upon satisfaction of the conditions  
5 described in this ordinance and pursuant to California Streets and Highways Code Sections  
6 8300 et seq. and San Francisco Public Works Code Section 787(a).

7 (b) For reference purposes, the Vacation Area also shall be identified as Assessor's  
8 Parcel Block No. 3719, Lot 519, for the Mission Street portion and Assessor's Parcel Block  
9 No. 3719, Lot 520, for the Fremont Street portion of the Vacation Area.

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

12 (d) The Board finds that the public interest, convenience, and necessity require that  
13 the Street Vacation be done as declared in this ordinance.

14 (e) The Street Vacation shall be operative as to all of the Vacation Area when: (1) the  
15 Public Trust Exchange becomes final and effective and (2) the Settlement Ordinance  
16 becomes final and effective.

17 (f) No existing easements or other rights are reserved for any public utility facilities that  
18 are in place in the Vacation Area during the term of the vacation, and any rights based upon  
19 any such public utility facilities shall be temporarily extinguished upon the effectiveness of the  
20 vacation hereunder and until the Vacation Area is rededicated to public use as set forth in  
21 Section 4 of this ordinance.

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23 Section 4. Rededication of the Vacation Area to Public Use for Street and Right-of-  
24 Way Purposes.



1 (a) The vacation of the Vacation Area is temporary and will be operative as set forth in  
2 this ordinance.

3 (b) The Board of Supervisors hereby declares that concurrent with recordation of the  
4 301 Mission Street Easement, the Vacation Area shall be rededicated to public use for street  
5 and right-of-way purposes subject to the Easement.  
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7 Section 5. The Board of Supervisors hereby directs the Clerk of the Board of  
8 Supervisors to transmit to the PW Director certified copies of this ordinance, and the Board of  
9 Supervisors hereby urges the PW Director to proceed in the manner required by law. The  
10 Clerk of the Board of Supervisors also is hereby directed to transmit to the PW Director  
11 certified copies of this ordinance so that this ordinance may be recorded together with any  
12 other documents necessary to effectuate the ordinance.  
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14 Section 6. The Mayor, Clerk of the Board of Supervisors, Director of Property, and PW  
15 Director are hereby authorized and directed to take any and all actions which they or the City  
16 Attorney may deem necessary or advisable in order to effectuate the purpose and intent of  
17 this ordinance (including, without limitation, the filing of the ordinance in the Official Records of  
18 the City and County of San Francisco).  
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20 Section 7. Effective and Operative Dates.

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

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1 (b) This ordinance shall become operative when both of the following have occurred:  
2 (1) the Public Trust Exchange becomes final and effective and (2) the Settlement Ordinance  
3 becomes final and effective.

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5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 JOHN D. MALAMUT  
9 Deputy City Attorney

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