

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 to grant to the Project Sponsor (the “301 Mission Street
12 Easement” or “Easement”).

13 (h) The Board of Supervisors will consider the grant of the 301 Mission Street
14 Easement in a yet to be introduced companion legislation ~~resolution on file with the Clerk of~~
15 ~~the Board of Supervisors in File 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 Board of Supervisors approves the
22 Easement legislation and said Easement is granted and recorded, the City intends to restore
23 the street status on the Vacation Area so it will continue in its current form as a dedicated
24 public right-of-way. Therefore, when the 301 Mission Street Easement is effective and
25 recorded, the Vacation Area will be rededicated to public use for street and right-of-way

1 purposes subject to the Easement.

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

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

1 the Board of Supervisors to grant the 301 Mission Street Easement over the City's interest in
2 the Vacation Area to the Project Sponsor. A copy of the PW Order is on file with the Clerk of
3 the Board of Supervisors in File No. 191253 and is incorporated herein by reference.

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

12 (m) On March 3, 2020, the Board of Supervisors adopted Resolution No. 034-20 (the
13 "Resolution of Intent"), which declared the intention of the Board to conditionally vacate the
14 Vacation Area. A copy of this resolution is on file with the Clerk of the Board of Supervisors in
15 File No. 191252 and incorporated herein by reference.

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

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

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24 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

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8 By: _____
9 JOHN D. MALAMUT
10 Deputy City Attorney
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