

FILE NO. 081122

RESOLUTION NO. 409-08

1 [Vacation of the Ingleside Path.]
2

3 **Resolution declaring the intention of the Board of Supervisors to vacate the Ingleside**
4 **Path right-of-way between Ocean Avenue and Corona Street and Urbano and Head**
5 **Streets; setting the hearing date for all persons interested in the proposed vacation of**
6 **the street area; and adopting environmental findings and findings that the vacation is**
7 **consistent with the City's General Plan and the eight priority policies of Planning Code**
8 **Section 101.1.**
9

10 WHEREAS, The vacation of the Ingleside path right-of-way between Ocean Avenue
11 and Corona Street and Urbano and Head Streets (the "Vacation Area") in the City and County
12 of San Francisco (the "City") has been proposed in order to facilitate (a) improved safety of
13 adjacent residents and citizens and appropriate treatment for substantial existing private
14 encroachments on the Ingleside Path and (b) a quit claim of the City's interest in the Path to
15 the abutting property owners pursuant to the terms of ~~sale agreements and quit claim deeds~~
16 substantially in the form attached hereto. Copies of said ~~sale agreements and quit claim~~
17 deeds are on file with the Clerk of the Board of Supervisors in File No.081122 , and are
18 hereby declared to be a part of this Resolution as if set forth fully herein; and,

19 WHEREAS, An examination of the Ingleside Terrace subdivision map and San
20 Francisco Ordinance No. 3547 reveal that the paths in the subdivision were not expressly
21 dedicated to the City. A copy of said Ordinance is on file with the Clerk of the Board of
22 Supervisors in File No. 081122 and is incorporated herein by reference. However, the
23 general public used the paths for many years, and, as such, the City acquired an implied
24 common-law dedication through the public's use of the walkways; and,
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1 WHEREAS, California case law indicates that an implied common-law dedication
2 acquired by public use can be abandoned if there is evidence of a clear intent to abandon the
3 subject property or nonuse. Here, the City manifest its intent to abandon the paths both
4 expressly and implicitly. In a letter dated November 19, 1997, then-Chief of the Department of
5 Public Work's Bureau of Street-Use and Mapping, Denise Brady, wrote to an Ingleside
6 Terrace property owner stating that the walkways were private streets belonging to the
7 homeowners' association. A copy of said letter is on file with the Clerk of the Board of
8 Supervisors in File No. 081122 and is incorporated herein by reference. Additionally, the City
9 allowed the pathways to be fenced off from general public use, which eliminated public use of
10 the pathways for at least 10 years. The City also took no action to prevent property owners
11 from constructing various improvements over such pathways at significant cost to such
12 owners. Because the City treated these paths as private and allowed fences that precluded
13 all public access for many years, the paths have been abandoned through nonuse. Further,
14 as a result of the City's written characterization of these paths as private and its acquiesce in
15 allowing adjacent property owners to modify the paths for private use, the City expressly and
16 implicitly abandoned them as public ways; and,

17 WHEREAS, Notwithstanding that the City has abandoned these paths as public ways,
18 the City finds for purposes of constructive notice and in furtherance of its historic practice of
19 following State law procedures to vacate and convey City rights in public ways that it will
20 proceed with vacation of such ways in accordance with the California Streets and Highways
21 Code Sections 8300 et seq.; and,

22 WHEREAS, The Vacation Area is shown in the Department of Public Works Map Nos.
23 5005 and 6005, both dated March 18, 2008, copies of which are on file with the Clerk in File
24 No. 081122 and is incorporated herein by reference; and,
25

1 WHEREAS, In Department of Public Works Order No. 177,575, dated May 26, 2008,
2 (the "DPW Order"), the Department of Public Works found that: (a) the Vacation Area is no
3 longer necessary for the City's present or prospective future right-of-way purposes and as a
4 result of abandonment and non-use is no longer useful as a nonmotorized transportation
5 facility as set forth in California Streets and Highways Code Section 892, and (b) there are no
6 physical public utility facilities within the Vacation Area except for Pacific Gas & Electric
7 ("PG&E") for electric transmission purposes and AT&T for telecommunication purposes. A
8 copy of the DPW Order is on file with the Clerk in File No.081122 and is incorporated by
9 reference as though fully set forth herein. The Board of Supervisors adopts as its own and
10 incorporates by reference herein the recommendations of the Department of Public Works as
11 set forth in the DPW Order concerning the vacation of the Vacation Area and other actions in
12 furtherance thereof; and,

13 WHEREAS, The public convenience and necessity require that the City reserve and
14 except from the vacation of the Vacation Area the non-exclusive easement and right (or
15 license) for the benefit of PG&E and AT&T in, upon, and over those certain portions of the
16 Vacation Area in which PG&E's and AT&T's in-place and functioning facilities are currently
17 located in the area shown on DPW's SUR Map Nos. 5005 and 6005, to the extent necessary
18 to maintain, operate, repair and remove such existing lines of pipe, conduits, cables, wires,
19 poles and other convenient structures, equipment and fixtures for the operation of existing gas
20 pipelines, telegraphic, telecommunication and telephone lines, and existing street lighting
21 facilities, and existing facilities for transportation or distribution of electric energy, and
22 reasonable access to the foregoing facilities for the purposes set forth above; and,

23 WHEREAS, The public convenience and necessity further require that any reserved or
24 excepted easements or licenses for existing utilities described in the preceding paragraph
25 shall be terminated upon the earlier of (a) the termination of any applicable easement, license

1 or similar agreement entered into with PG&E and AT&T pursuant to its terms, or (b) the
2 determination by the Director of Public Works that (1) reasonable alternative utility service has
3 been provided to the areas served by such utilities for the period of service needed or (2) the
4 areas served by the utilities no longer require such service (as may be evidenced by written
5 notice of the owners being served that such service is no longer required); and,

6 WHEREAS, Any removal or relocation of a utility for which an easement or license has
7 been reserved or excepted herein for the benefit of any party shall be performed at no cost or
8 expense to the City, provided that nothing herein shall be deemed to preclude any future
9 owner of any portion of the Vacation Area from charging a third party for or otherwise causing
10 a third party to bear the costs of such relocation where such charge or cost is otherwise
11 permitted by law; and,

12 WHEREAS, Except as specifically provided above, the public convenience and
13 necessity require no other easements or rights be reserved for any public utility facilities that
14 are in place in the Vacation Area and that any rights based on any such public utility facilities
15 be extinguished; and,

16 WHEREAS, On October 2, 2007, the Director of City Planning (the "Director of
17 Planning") sent a letter, a copy of which is on file with the Clerk of the Board of Supervisors in
18 File No. 081122 and incorporated herein by reference, wherein the Director of Planning (a)
19 found that the proposed vacation of the Vacation Area and associated quit claim of the City's
20 interest therein are, on balance, not inconsistent with the City's General Plan and the eight
21 priority policies of Planning Code Section 101.1 and (b) determined that the actions
22 contemplated in this Resolution are in compliance with the California Environmental Quality
23 Act (California Public Resources Code Sections 21000 et seq.); and,

24 WHEREAS, In a letter dated December 18, 2007 (the "Real Estate Letter"), the City's
25 Director of Property found that the proposed price reflects the appropriate value for the portion

1 of the Vacation Area to be conveyed thereunder. This value represents uncertainty as to the
2 scope of the City's actual rights over the subject pathways. In addition, because the pathways
3 are not capable of independent development due to their size, location, access, and
4 occupation, the Director has recommended, subject to Board approval, the direct conveyance
5 to the adjacent property owners, as represented by non-profit organizations, as an alternate
6 conveyancing procedure as identified in Administrative Code Section 23.3. A copy of said
7 letter is on file with the Clerk of the Board of Supervisors in File No. 081122 and is
8 incorporated herein by reference.

9 WHEREAS, Section 787(a) of the San Francisco Public Works Code provides that the
10 City will follow the procedure for vacating public right-of-ways as set forth in State law in the
11 California Streets and Highways Code Sections 8300 et seq. and such rules and conditions as
12 are adopted by the Board of Supervisors; now, therefore, be it

13 RESOLVED, That the vacation proceeding of the Vacation Area is conducted under the
14 general vacation procedures of the Public Streets, Highways and Service Easements
15 Vacation Law (California Streets and Highways Code Sections 8300 et seq.); and, be it

16 FURTHER RESOLVED, That under these provisions of the Streets and Highways
17 Code, the Board of Supervisors hereby declares that it intends to order the vacation of the
18 Vacation Area, as described in SUR Map Nos. 5005 and 6005 referred to above; and, be it

19 FURTHER RESOLVED, That the vacation of the Vacation Area shall be conditioned
20 upon and shall not become effective until the Clerk of the Board of Supervisors records or
21 causes to be recorded a certified copy of the Ordinance ordering such vacation as provided in
22 Section 8325(a) of the California Streets and Highways Code, and thereupon such vacation
23 shall be effective without any further action by the Board of Supervisors; and, be it

1 FURTHER RESOLVED, That notice is hereby given that on the 4th day of November ,
2 2008, in the Legislative Chambers of the Board of Supervisors, all persons interested in or
3 objecting to the proposed vacation will be heard; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors adopts as its own, the findings
5 in the Director of Planning's letter referred to above, including the determination of compliance
6 with the California Environmental Quality Act and findings that the proposed vacation of the
7 Street Area and quit claim of the City's interest therein are not inconsistent with the General
8 Plan and the priority policies of Planning Code Section 101.1; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors directs the Clerk to transmit to
10 the Department of Public Works a certified copy of this resolution, and the Board of
11 Supervisors urges the Director of Public Works to publish and post this Resolution promptly in
12 the manner required by law and to give notice of the hearing of such contemplated action in
13 the manner required by law.

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Resolution

File Number: 081122

Date Passed:

Resolution declaring the intention of the Board of Supervisors to vacate the Ingleside Path right-of-way between Ocean Avenue and Corona Street and Urbano and Head Streets; setting the hearing date for all persons interested in the proposed vacation of the street area; and adopting environmental findings and findings that the vacation is consistent with the City's General Plan and the eight priority policies of Planning Code Section 101.1.

October 7, 2008 Board of Supervisors — ADOPTED

Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell,
Mirkarimi, Peskin, Sandoval

Excused: 1 - McGoldrick

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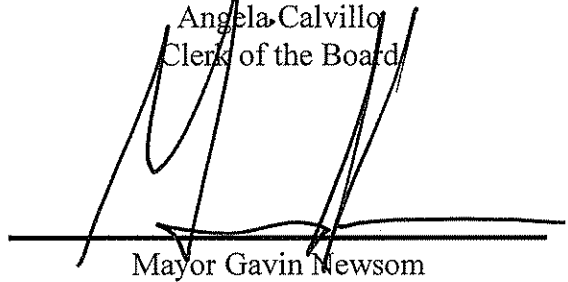
I hereby certify that the foregoing Resolution was ADOPTED on October 7, 2008 by the Board of Supervisors of the City and County of San Francisco.

10/10/2008

Date Approved



Angela Calvillo
Clerk of the Board



Mayor Gavin Newsom