

1 [Settlement of Lawsuit - George Birmingham - City to Receive \$1,500,000 for Sale of Parcels
2 on the 400 Block of Burnett Avenue]

3 **Ordinance authorizing settlement of the lawsuit filed by George Birmingham against**
4 **the City and County of San Francisco; approving the Agreement for Purchase and Sale**
5 **of Real Estate; and authorizing official acts in connection with this Ordinance; the**
6 **lawsuit was filed on September 9, 2015, in San Francisco Superior Court, Case No.**
7 **CGC 15-547835; entitled George Birmingham v. City and County of San Francisco, et**
8 **al.; the lawsuit involves plaintiff's attempts to gain street access for his parcel that is**
9 **separated from Burnett Avenue by a paper street owned by Public Works and a vacant**
10 **Public Utilities Commission parcel; the material terms of the settlement are the City will**
11 **pursue the legislative approvals necessary to sell the parcels to plaintiff, and plaintiff**
12 **will purchase the parcels from the City for \$1,500,000; approving the sale of the**
13 **parcels; and affirming the Planning Department's determination under the California**
14 **Environmental Quality Act.**

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

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. 171013 and is incorporated herein by reference. The Board
21 affirms this determination.

22 Section 2. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
23 authorizes the City Attorney to settle the action entitled George Birmingham v. City and
24 County of San Francisco, et al., San Francisco Superior Court, Case No. CGC 15-547835, by
25 the material terms as set forth in the Settlement Agreement and Mutual Releases and Exhibits

1 (“Settlement Agreement”) contained in Board of Supervisors File No. 171004. Plaintiff’s
2 lawsuit seeks an access route from his property to Burnett Avenue by traversing two City-
3 owned parcels: a vacant paper street titled Burnett Avenue North located east of Burnett
4 Avenue near paper street Copper Alley (“Public Works Property”) and a remnant of the
5 Auxiliary Water Supply System owned by the Public Utilities Commission located on the 400
6 block of Burnett Avenue, immediately west of the Public Works Property (Parcel 2719C/023;
7 the “PUC Property”). The material terms of the Settlement Agreement include Public Works
8 pursuing vacation of the Public Works Property and selling it to Plaintiff; the Public Utilities
9 Commission selling the PUC Property (together with the Public Works Property, the
10 “Settlement Property”) to Plaintiff; the City seeking a rezoning of the Settlement Property to
11 Residential Mixed Use Low Density (RM-1); the City granting driveway easements across the
12 Settlement Property before selling it to Plaintiff; Plaintiff paying to the City \$1,500,000, the full
13 appraised value of the Settlement Property at the time the lawsuit was filed, for the Settlement
14 Property; Plaintiff paying to City \$100,000 for the City’s administrative costs; and such other
15 material terms as are set forth in the Settlement Agreement and the Agreement for Sale of
16 Real Estate (the “Purchase Agreement”, attached as Exhibit C to the Settlement Agreement),
17 contained in Board of Supervisors in File No. 171004.

18 Section 3. The above-named action was filed in San Francisco Superior Court on
19 September 9, 2015, and the following parties were named in the lawsuit: City and County of
20 San Francisco; San Francisco Department of Public Works; San Francisco Public Utilities
21 Commission; and co-defendant the Burnett Terrace Condominiums Homeowners Association.

22 Section 4. The Public Utilities Commission approved the Settlement Agreement, as it
23 relates to the PUC Property, by Resolution No. 17-0078 on April 11, 2017. A copy of that
24 resolution is contained in Board of Supervisors File No. 171004.

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1 Section 5. The Public Utilities Commission approved the Purchase Agreement and a
2 Reimbursement Agreement by Resolution No. 17-0088 on April 25, 2017, including a
3 declaration that the PUC Property is surplus to the Public Utilities Commission's utility needs,
4 and authorized a request to the Board of Supervisors and the Mayor to approve the sale,
5 subject to the terms of the Purchase Agreement. A copy of that resolution is contained in
6 Board of Supervisors File No. 171004. While the Settlement Property is surplus to the Public
7 Utilities Commission's needs, the Board of Supervisors determines that it is not surplus to the
8 City's needs under San Francisco Administrative Code Chapter 23A because it is needed to
9 provide access to the adjoining property owner and to settle the lawsuit against the City. The
10 Board of Supervisors further determines that the appraisal of the Settlement Property, valid as
11 of the date of lawsuit initiation, satisfies the appraisal requirements of San Francisco
12 Administrative Code Section 23.3. Of the \$1,500,000 sale price, \$1,200,000 is for the PUC
13 Property and \$300,000 is for the Public Works Property.

14 Section 6. The Board of Supervisors approves the Settlement Agreement, including
15 the Purchase Agreement and the Reimbursement Agreement, and authorizes the Director of
16 Property and other applicable City officials to take all actions reasonably necessary to perform
17 the City's obligations under the Settlement Agreement, and to transfer the Settlement
18 Property to Plaintiff as contemplated by the Settlement Agreement and the Purchase
19 Agreement.

20 Section 7. Pursuant to the Settlement Agreement, companion legislation proposes to:
21 amend the zoning designation of the Settlement Property, contained in Board of Supervisors
22 File No. 171013 and vacate the Public Works Property pursuant to the Purchase Agreement,
23 contained in Board of Supervisors File No. 180517.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



ROBB W. KAPLA
Deputy City Attorney

RECOMMENDED:



MOHAMMED NURU
Director of Public Works



MARLAN L. KELLY, JR.
General Manager,
San Francisco Public Utilities Commission



JOHN UPDIKE
Director of Property

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City and County of San Francisco

Tails Ordinance

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

File Number: 171004

Date Passed: July 31, 2018

Ordinance authorizing settlement of the lawsuit filed by George Birmingham against the City and County of San Francisco; approving the Agreement for Purchase and Sale of Real Estate; and authorizing official acts in connection with this Ordinance; the lawsuit was filed on September 9, 2015, in San Francisco Superior Court, Case No. CGC 15-547835; entitled George Birmingham v. City and County of San Francisco, et al.; the lawsuit involves plaintiff's attempts to gain street access for his parcel that is separated from Burnett Avenue by a paper street owned by Public Works and a vacant Public Utilities Commission parcel; the material terms of the settlement are the City will pursue the legislative approvals necessary to sell the parcels to plaintiff, and plaintiff will purchase the parcels from the City for \$1,500,000; approving the sale of the parcels; and affirming the Planning Department's determination under the California Environmental Quality Act.

July 18, 2018 Government Audit and Oversight Committee - RECOMMENDED

July 24, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 10 - Cohen, Brown, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani and Yee

Excused: 1 - Tang

July 31, 2018 Board of Supervisors - FINALLY PASSED

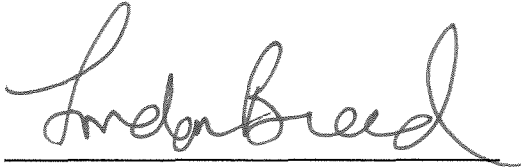
Ayes: 11 - Cohen, Brown, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

File No. 171004

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/31/2018 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



London N. Breed
Mayor



Date Approved