



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning Code Text Amendment

HEARING DATE: DECEMBER 21, 2017  
90 - DAY EXPIRATION DATE: JANUARY 24, 2018

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

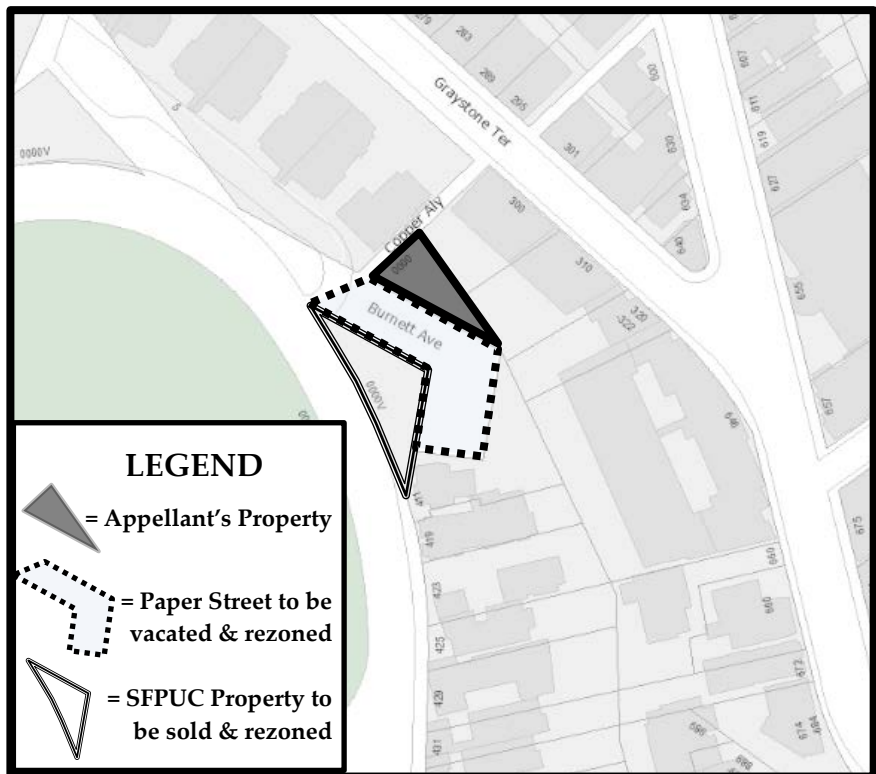
Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* **Amending the Zoning Map Pursuant to Settlement**  
*Case Number:* **2017-013096MAP** [Board File No. 171013]  
*Initiated by:* Supervisor Sheehy / Introduced September 19, 2017  
Extended December 5, 2017 [Board File No. 171292]  
*Staff Contact:* Audrey Butkus, Legislative Affairs  
[audrey.butkus@sfgov.org](mailto:audrey.butkus@sfgov.org), (415) 575-9129  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362  
*Recommendation:* **Recommend Approval**

### PLANNING CODE AMENDMENT

The Ordinance would amend the Planning Code by revising Zoning Map Sheet ZN06 to rezone Assessor's Parcel Block No. (AB) 2719C, Lot No. 023, located at Burnett Avenue and Burnett Avenue North, from Public (P) to Residential, Mixed Districts, Low Density (RM-1); and rezone a portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023, to RM-1.



**The Way It Is Now:**

- Assessor's Parcel Block No. (AB) 2719C, Lot No. 023 is currently zoned Public (P) and is owned by the San Francisco Public Utilities Commission (SFPUC).
- A portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023 is a paper street with no plans for street development.

**The Way It Would Be:**

- Assessor's Parcel Block No. (AB) 2719C, Lot No. 023 would be rezoned to Residential, Mixed Districts, Low Density (RM-1) and sold to a private party.
- A portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023 would be rezoned Residential, Mixed Districts, Low Density (RM-1), vacated, and sold to a private party.

**BACKGROUND**

The purpose of the vacation, sale, and rezoning is to allow the current owner of Assessor's Block 2745 Lot 036 (Lot 36), to gain access to Burnett Avenue through purchase of the two rezoned lots. The owner of Lot 36 currently has no street access because it is separated from Burnett Avenue by the parcels in question. The owner of lot 36 filed a lawsuit against the City and neighboring properties in 2015 seeking access through easements, encroachment permits, or sale of the City parcels. The parties to the lawsuit have reached a settlement agreement that resolves the litigation and provides Lot 36 with access to Burnett Avenue using the portion of former Burnett Avenue North and SFPUC parcels.

**ISSUES AND CONSIDERATIONS**

**Considering All Options**

Other methods for providing Lot 36 with access to Burnett Avenue are not feasible. There is no practical way to construct an access route through parcels other than the City parcels due to the slope of the hillside where Lot 36 is located, and the construction that exists on neighboring properties. An easement across the city parcels is also infeasible because it contradicts the mandate that the SFPUC receive fair market value for surplus properties. An easement would divide the City parcels, significantly decreasing the value of the parcels. In contrast, the sale of the city-owned parcels will allow the SFPUC to fulfill its duty to its taxpayers, while resolving Lot 36's access issues and complying with terms of the settlement agreement.

If approved, the rezoning of the parcel and street in question would not constitute a right to develop the property without first seeking all appropriate approvals from the Planning Commission. Any future development of the parcels would additionally require 311 notification.

**RECOMMENDATION**

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

The re-zoning of the two city-owned parcels is consistent with the surrounding zoning of RM-1 and contextually appropriate with surrounding land uses. Other potential options for resolving this land dispute, such as constructing the remaining paper portion of Burnett Ave North or Copper Alley, or establishing an easement through the SFPUC property are not feasible. The sale of the SFPUC parcel and portion of Burnett Ave North provide an economically feasible and appropriate solution to the filed lawsuit.

## **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may adopt, reject, or adopt with modifications the proposed ordinance.

## **IMPLEMENTATION**

The Department determined that this Ordinance will not impact our current implementation procedures, permit costs or review time.

## **ENVIRONMENTAL REVIEW**

A Certificate of Determination for Exclusion/Exemption from Environmental Review (the Certificate) was prepared by the Department for the proposed project, which consisted of an analysis of the project's eligibility for exemption from California Environmental Quality Act (CEQA) review under CEQA State Guidelines Section 15061(b)(3) or the General Rule Exclusion (GRE) and CEQA State Guidelines section 15312, or Class 12. The GRE establishes that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Additionally, a Class 12 Exemption provides an exemption from environmental review for the sale of surplus government property except for parcels of land located in an area of statewide, regional or area-wide concern identified in CEQA Guidelines Section 15206(b)(4). The property is not located in an area of statewide, regional or area-wide concern. For the above reasons, the proposed project is appropriately exempt from environmental review. The proposed project would have no significant environmental effects. Accordingly, the proposed project is appropriately exempt from CEQA under Section 15061(b)(3) and 15312. The Certificate was signed on October 13th, 2017.

## **PUBLIC COMMENT**

As of the date of this report, staff has received several public comments regarding the proposed Ordinance. The written public comments received by staff as of December 13, 2017 are attached as Exhibit B. A summary of the comments received via phone are below:

- One caller stated that the Commission rezoning this land is the equivalent of approving this land for development. The caller believes this land being developed would be a violation of the surrounding property owners' rights. The caller is concerned about the steep slope of this parcel causing excessive amounts of runoff to the parcels directly below if developed. The caller was also concerned about excavation of the hillside in order to install support beams for any future development.

-One caller believed that the PUC parcel and vacated street proposed for rezoning and sale should have also been offered via a public process for other neighbors to purchase before the settlement in question was arranged.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval</b>
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**Attachments:**

- Exhibit A:        Draft Planning Commission Resolution
- Exhibit B:        Written Public Comment Received as of December 13, 2017
- Exhibit C:        Certificate of Determination: Exclusion/Exemption from Environmental Review
- Exhibit D:        Board of Supervisors File No. 170625



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE DECEMBER 21, 2017

*Project Name:* Amending the Zoning Map Pursuant to Settlement  
*Case Number:* 2017-013096MAP [Board File No. 171013]  
*Initiated by:* Supervisor Sheehy / Introduced September 19, 2017  
Extended December 5, 2017 [Board File No. 171292]  
*Staff Contact:* Audrey Butkus, Legislative Affairs  
[audrey.butkus@sfgov.org](mailto:audrey.butkus@sfgov.org), (415) 575-9129  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org), 415-558-6362

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE BY REVISING ZONING MAP SHEET ZN06 TO REZONE ASSESSOR'S PARCEL BLOCK NO. (AB) 2719C, LOT NO. 023, LOCATED AT BURNETT AVENUE AND BURNETT AVENUE NORTH, FROM PUBLIC (P) TO RESIDENTIAL, MIXED DISTRICTS, LOW DENSITY (RM-1); REZONE A PORTION OF BURNETT AVENUE NORTH GENERALLY BOUNDED BY AB 2745, LOT NO. 036, AND AB 2719C, LOT NO. 023, TO RM-1; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.**

WHEREAS, on September 19, 2017 Supervisor Sheehy introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 171013, which would amend the Planning Code by revising Zoning Map Sheet ZN06 to rezone Assessor's Parcel Block No. (AB) 2719C, Lot No. 023, located at Burnett Avenue and Burnett Avenue North, from Public (P) to Residential, Mixed Districts, Low Density (RM-1); and rezone a portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023, to RM-1.;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 21, 2017; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3) and 15312; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve** the proposed ordinance.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the re-zoning of the two city-owned parcels is consistent with the surrounding zoning of RM-1 and contextually appropriate with surrounding land uses. Other potential options for resolving this land dispute, such as constructing the remaining paper portion of Burnett Ave North or Copper Alley, or establishing an easement through the SFPUC property are not feasible. The sale of the SFPUC parcel and portion of Burnett Ave North provide an economically feasible and appropriate solution to the filed lawsuit.
2. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## **GENERAL PLAN PRIORITIES**

The General Plan seeks ensure that the qualities that make San Francisco unique are preserved and enhanced while also serving as the embodiment of the community's vision for the future of San Francisco. As a whole, the General Plan's goals are to: create and maintain the economic, social, cultural, and esthetic values that establish the desirable quality and unique character of the city; improve the city as a place for healthful, safe, and satisfying living by providing adequate open spaces, community facilities and affordable housing of a high standard; ensuring commerce and industry are able to thrive; coordinating the varied patterns of land use with circulation routes and facilities that are required for the efficient movement of people and goods; and reflecting the growth and development of the city with the surrounding region.

## **URBAN DESIGN ELEMENT**

### **OBJECTIVE 2**

**CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.**

#### **Policy 2.9**

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

*Policy 2.9 a. of the Urban Design Element of the General Plan lists various factors to consider when determining if a street vacation can be recommended. The first factor is whether the street vacation is a*

*“detriment to vehicular or pedestrian circulation”. In this case, the undeveloped Burnett Avenue North right-of-way is an inaccessible remnant of a “paper” street that has no current or future role in vehicular or pedestrian circulation, except its potential to provide street access to Lot 36. Policy 2.9 a. also states that street vacations that would cause “interference with the rights of access to any private property” are not recommended. In this case, the street vacation and sale of the undeveloped Burnett Avenue North right-of-way would actually provide street access to Lot 36 that currently does not exist and allow the City and County to comply with the terms of a settlement agreement that resolves longstanding litigation between the owner of Lot 36, neighboring properties, and the City while receiving fair market compensation for these City-owned parcels. The sale of the vacated right-of-way would stipulate that the property owner could not alienate Lot 36 from street access in future sales, so street access will be guaranteed for Lot 36 and any residential development that occurs on that parcel in the future.*

*Most factors listed in Urban Design Element Policy 2.9 a. support the vacation of the undeveloped right-of-way, the sale and rezoning of both the undeveloped right-of-way and SFPUC parcel to RM-1. Factor 8 considers actions that would result in “Enlargement of a property that would result in (i) additional dwelling units in a multi-family area” as an unfavorable outcome. While the vacation, sale, and rezoning of the undeveloped right-of-way and SFPUC parcel could potentially add additional residential development capacity, the actions do not result in an enlargement of a property, which would require additional actions and approvals by the property owner. Given that any concerns raised by the factors listed in 2.9 a. are tenuous or indirect and the benefits of the project are clear, on balance these policies appear to support the vacation of the undeveloped right-of-way along with the sale and rezoning of the right-of-way and SFPUC parcels.*

#### **OBJECTIVE 4**

**IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY**

#### **Policy 4.15**

Protect the livability and character of residential properties from the intrusion of incompatible new buildings.

*The settlement agreement between the owner of Lot 36, the City, and neighboring properties calls for the rezoning of the undeveloped Burnett Avenue North right-of-way and the SFPUC parcel Block 2719C Lot 23, to RM-1. Rezoning of the city-owned parcels is necessary because current zoning would not allow the construction of a driveway to provide access to Lot 36. The undeveloped Burnett Avenue North right-of-way currently has no zoning designation and the SFPUC parcel is designated Public (P). Rezoning the city-owned parcels to RM-1 would make them consistent with Lot 36 as well as many neighboring parcels. Providing consistent zoning across the parcels ensures that the owner of Lot 36 can construct a driveway to the street while also ensuring that height, bulk, and design of residential development on the parcels is consistent with the appearance and density of neighboring residential structures.*

3. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*



4. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on December 21, 2017.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: December 21, 2017

**From:** [Glenn Wyatt](#)  
**To:** [Butkus, Audrey \(CPC\)](#); [Danny Moreno](#)  
**Subject:** Letter of concern from 322 Graystone Terrace  
**Date:** Wednesday, December 13, 2017 4:58:36 PM

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Audrey Butkus,

In regards to the rezoning of a parcel and portion of Burnett Ave, from the current public open space zone to residential zone, I am against it. While I am totally aware that current re-zoning issue is just the first step in a long process of planning approvals before anything is built on the land, I want to convey my concerns early in this process for the record.

The largest impacts I am most concerned is the environmental impact such as the hill side erosion caused by construction on such a steep slope. This could cause a land slide into my property. The second environmental impact is the loss of habitat of the family of raccoons that live on the hillside. The raccoon family walks down the hill side in question and on my roof after a major rain or whenever at night they feel like it. Any zoning changes could lead to the loss of habitat or even death of this raccoon family.

As part of the law suit settlement, I do understand the City's reasoning for selling the land (so the land owner with the vacant land can get street access). However, now that the city is proposing to rezone and sell it, we the property owners should have been given the opportunity to buy the tiny sliver of land directly behind our own properties.

Thank you,  
Glenn Wyatt  
322 Graystone Terrace, San Francisco, CA 94114

**From:** [dmsf](#)  
**To:** [Butkus, Audrey \(CPC\); Sheehy, Jeff \(BOS\)](#)  
**Cc:** [Ross Woodall; glennwyatt@gmail.com](#)  
**Subject:** Letter of Concerns\_Zoning Map Amendment (see attachment)  
**Date:** Wednesday, December 13, 2017 4:04:16 PM  
**Attachments:** [Letter of Concern\\_Zoning Map Amendment\\_12.12.17.docx](#)

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To:

Planner: Audrey Butkus  
Sponsor: Supervisor, Jeff Sheehy

Hello,

I'm submitting my Letter of Concerns (see attachment for my concerns) per guidance from the Notice of Public Hearing letter that I received on November 2017 and sending this to Planner, Audrey Butkus and Sponsor, Supervisor Jeff Sheehy.

This is regarding the Hearing on Thursday, December 21, 2017 at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 400, Case Type Zoning Map Amendment in front of the Hearing Body: Planning Commission.

I am against the Proposal to rezone and build any structure and street, essentially at the end of my lot, that will obstruct the beautiful view and natural environment. A rezoning will destroy the area for all the small animals and birds that live in the area, as well as impact the neighborhood and neighbors. Please do not rezone and allow any construction of any structure or street adjacent to mine lot. I have lived at my address for twenty-five years. Why is this coming up now? Please do not ruin the area. I am totally against this rezoning and proposed building and street.

Let me know if there is anything that I can do to prevent this rezoning, and potential construction of building and street addition!

*Thank you,*

*Danny Moreno – (415) 729-6015, 320 Graystone Terrace, San Francisco, CA, 94114*

From: Danny Moreno (Property owner)  
320 Graystone Terrace (Block 2745, Lot 066)  
San Francisco, CA, 94114

To: San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA, 94103

12 December 2017

For the attention of Audrey Butkus, Applicant Planner and Jeff Sheehy, Supervisor

Dear Madam/Sir

REGARDING - NOTICE OF PUBLIC HEARING:

<b>ORDINANCE INFORMATION</b>			
Project name:	<b>Rezoning a Parcel &amp; a Portion of Burnett Ave North</b>	Case No.:	<b>2017-013096MAP</b>
Existing Zoning:	<b>Public (P)</b>	Board File No.:	<b>171013</b>
Proposed Zoning:	<b>Residential, Mixed Districts, Low Density (RM-1)</b>	Sponsor:	<b>Supervisor Jeff Sheehy</b>

Ordinance Description: The proposed ordinance will be heard at the Planning Commission hearing on December 21, 2017. The Ordinance would amend the Planning Code by revising Zoning Map Sheet ZN06 to rezone Assessor's Parcel Block No. (AB) 2719C, Lot No. 023, located at Burnett Avenue and Burnett Avenue North, from Public (P) to Residential, Mixed Districts, Low Density (RM-1); and rezone a portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023, to RM-1. The Amendment is being proposed as the result of a settlement.

The Planning Commission hearing will be advisory to the Board of Supervisors who has final approval authority. This notice is being sent to all property owners within 300' of the proposed rezoning. Your property may not be subject to the proposed rezoning.

I write as the property owner of Block 2745, Lot 066, Property Location 320 Graystone Terrace, with concerns regarding the rezoning stated in the above Ordinance Case No. 2017-013096MAP.

I am concerned about the following items:

- Urban Bird Refuge - This property is within 300' of a possible urban bird refuge. Planning Commission Resolution 18406 established policies concerning the window treatment, lighting design, and wind generation for certain projects in this area. For more information please consult the 'Standards for Bird-Safe Buildings'.
- Slope of 20% or greater.
- Landslide concerns for the integrity of the hill side, our property and our home.
- If Burnett Avenue North is extended as shown in the Ordinance description map, it will cause increased pollution impacting my property from vehicles accessing the proposed Burnett Avenue North extension.

- If Burnett Avenue North is extended as shown in the Ordinance description map, that will impact my property safety with easier access from the proposed Burnett Avenue North extension, and the safety for the homes adjacent to our property.
- And if any structure and road were built on the identified lot, that will severely impact the beauty and tranquility of our property. We've lived in this property for twenty-five years without any rezoning. Why now?
- Why is rezoning being considered, in this extreme way that, including a structure and a street extension that will severely impact the quality and safety of our lives and our neighbors.

I am strongly against the rezoning and the building of any structure and street on the following lots.

- Parcel Block No. (AB) 2719C, Lot No. 023, located at Burnett Avenue and Burnett Avenue North
- Portion of Burnett Avenue North generally bounded by AB 2745, Lot No. 036, and AB 2719C, Lot No. 023

My home is our sacred safe haven and this proposed rezoning and building of a structure and street will change our safety and the quality of our lives and our neighbor's lives forever. I will no longer be able to see out of my back windows viewing nature and the beautiful sky, but be shadowed by darkness of a structure and street with vehicles and pollution. Please do not rezone and build anything in the proposed lots.

Thank you,

Danny Moreno (Property owner)  
320 Graystone Terrace (Block 2745, Lot 066)  
San Francisco, CA, 94114



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination EXCLUSION/EXEMPTION FROM ENVIRONMENTAL REVIEW

*Date:* 12/13/2017  
*Case No.:* 2017-013410ENV  
*Project Title:* 401 Burnett Ave  
*Zoning:* P (Public) Use District  
 40-X Height and Bulk District  
 Hayes Valley Residential Historic District  
*Block/Lot:* 2745/036 & 2719C/023  
*Lot Size:* 7,421 square feet  
*Project Sponsor:* Supervisor Jeff Sheehy, Board of Supervisors  
 (415) 554-6968  
*Staff Contact:* Laura Lynch – (415) 575-9045  
 Laura.lynch@sfgov.org

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### PROJECT DESCRIPTION:

The project site consists of an irregularly shaped parcel at Block 2719C Lot 023 owned by the San Francisco Public Utilities Commission and public land owned by the San Francisco Department of Public Works, in the Twin Peaks neighborhood. The sale of these properties would require the City to rezone the property from Public (P) to Residential-Mixed, Low Density (RM-1), matching the surrounding area. The vacation, rezoning, and sale of the City parcels would provide the neighboring property 9-11 Burnett Avenue with unobstructed access to Burnett Avenue.

### EXEMPT STATUS:


General Rule Exclusion (California Environmental Quality Act (CEQA) Guidelines, section 15061(b)(3)) and Categorical Exemption Class 12, Surplus Government Property Sales (CEQA Guidelines, section 15312).

### REMARKS:

See next page.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and local requirements.

*for*   
 Lisa Gibson  
 Environmental Review Officer

12/13/2017  
 Date

cc: Audrey Butkus, Legislative Affairs

Supervisor Jeff Sheehy, District 8 (via Clerk of the Board)  
 Virna Byrd, M.D.F.

## CONCLUSION

CEQA State Guidelines section 15061(b)(3) establishes the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed project would have no significant environmental effects and thus it is appropriately exempt from environmental review under the general rule exclusion (CEQA Guidelines section 15061(b)(3)). Additionally, CEQA State Guidelines section 15312, or Class 12, provides an exemption from environmental review for the sale of surplus government property except for parcels of land located in an area of statewide, regional or areawide concern identified in CEQA Guidelines Section 15206(b)(4). The property is not located in an area of statewide, regional or areawide concern. For the above reasons, the proposed project is appropriately exempt from environmental review.



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination Exemption from Environmental Review

*Case No.:* 2011.0958E  
*Project Title:* 9-11 Burnett North Avenue  
*Zoning:* RM-1 (Residential Mixed, Low Density) Use District  
40-X Height and Bulk District  
*Block/Lot:* 2745/036  
*Lot Size:* 2,327 square feet  
*Project Sponsor:* Warner Schmalz  
(415) 252-7063  
*Staff Contact:* Jeanie Poling – (415) 575-9072  
jeanie.poling@sfgov.org

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### PROJECT DESCRIPTION:

The project site is a steeply sloping vacant lot located on the western slope of Twin Peaks on the north side of Burnett North Avenue in the block bounded by Burnett North Avenue, Copper Alley, Graystone Terrace, and Dixie Alley. The proposed project would construct a four-story, 4,315-square-foot, 40-foot-tall, two-unit residential building, which would be accessed at the upper level via a new driveway apron on Burnett North Avenue.

### EXEMPT STATUS:

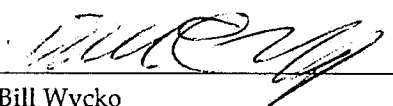
Categorical Exemption, Class 3 (State CEQA Guidelines Section 15303(b))

### REMARKS:

See next page.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

  
\_\_\_\_\_  
Bill Wycko  
Environmental Review Officer

  
\_\_\_\_\_  
Date

cc: Warner Schmalz, Project Sponsor  
Michael Smith, Neighborhood Planning Division

Supervisor Scott Wiener, District 8  
Distribution List, Virna Byrd, M.D.F.



during excavation operations, (3) temporary slopes and temporary shoring should be required for the retaining walls upslope of the development, and (4) permanent rock anchors or tiebacks may be required. The report further specifies that retaining walls be designed to resist lateral earth pressures 45 to 65 pounds per cubic foot, and that site drainage be provided to prevent the build-up of hydrostatic pressures from surface and subsurface water infiltration. The report concludes that the site is suitable for the proposed development, provided that its recommendations be incorporated into the design and construction of the proposed structure.

The geotechnical report was reviewed by a licensed structural engineer, who concluded that the site is suitable for the proposed construction.<sup>3</sup> The proposed new foundation system for the four-story building structure and driveway would conform to recommendations outlined in the geotechnical report for building foundations, retaining walls, excavation and shoring, and erosion control. The foundation system would consist of grade beams and drilled piers with the drilled piers being a minimum of 18 inches in diameter and a minimum of 15 feet embedment into the bedrock.

The proposed project would be required to conform to the San Francisco Building Code, which ensures the safety of all new construction in the City. Decisions about appropriate foundation and structural design are considered as part of the Department of Building Inspection (DBI) permit review process. DBI would review background information including geotechnical and structural engineering reports to ensure that the security and stability of adjoining properties and the subject property is maintained during and following project construction. Therefore, potential damage to structures from geologic hazards on the project site would be addressed through the DBI requirement for a geotechnical report and review of the building permit application pursuant to its implementation of the Building Code.

In light of the above, the proposed project would not result in a significant effect related to seismic and geologic hazards.

Exemption Class. CEQA State Guidelines Section 15303(b), or Class 3, provides an exemption from environmental review for the construction of a duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units. The proposed building would entail the construction of a 4,315-square-foot residential structure with two dwelling units. Therefore, the proposed construction is exempt from environmental review under Class 3.

Summary. CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. The proposed project would have no significant environmental effects. The project would be exempt under the above-cited classification. For the above reasons, the proposed project is appropriately exempt from environmental review.

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<sup>3</sup> Rodrigo Santos, S.E., Santos & Urrutia, letter re 9 & 11 Burnett Ave./Copper Alley, November 4, 2011. This report is available for review as part of Case No. 2011.0958E.

1 [Planning Code, Zoning Map - Amend Zoning Map Pursuant to Settlement]

2  
3 **Ordinance amending the Planning Code by revising Zoning Map Sheet ZN06 to rezone**  
4 **Assessor's Parcel Block No. (AB) 2719C, Lot No. 023, located at Burnett Avenue and**  
5 **Burnett Avenue North, from Public (P) to Residential, Mixed Districts, Low Density (RM-**  
6 **1); rezoning a portion of Burnett Avenue North generally bounded by AB 2745, Lot**  
7 **No. 036, and AB 2719C, Lot No. 023, to RM-1; affirming the Planning Department's**  
8 **determination under the California Environmental Quality Act; making findings of**  
9 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
10 **Section 101.1; and adopting findings of public necessity, convenience, and welfare**  
11 **under Planning Code, Section 302.**

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

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

20 Section 1. Environmental and Land Use Findings.

21 (a) The Planning Department has determined that the actions contemplated in this  
22 ordinance comply with the California Environmental Quality Act (California Public Resources  
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
24 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
25 determination.

1 (b) On \_\_\_\_\_, the Planning Department determined that the actions  
2 contemplated in this ordinance are consistent, on balance, with the City's General Plan and  
3 eight priority policies of Planning Code Section 101.1. The Board adopts this determination  
4 as its own. A copy of said determination is on file with the Clerk of the Board of Supervisors in  
5 File No. \_\_\_\_\_, and is incorporated herein by reference.

6  
7 Section 2. Background and Other Findings.

8 (a) This ordinance fulfills a condition of the Settlement Agreement in the action entitled  
9 George Birmingham v. City and County of San Francisco, et al. George Birmingham  
10 ("Plaintiff") seeks an access route from his property to Burnett Avenue by traversing two city-  
11 owned parcels: a vacant paper street titled Burnett North Avenue ("Public Works Property")  
12 and a surplus remnant of the Auxiliary Water Service System owned by the Public Utilities  
13 Commission ("PUC Property"). The material terms of the Settlement Agreement include  
14 Public Works vacating the remainder of the Public Works Property and seeking approvals to  
15 sell the parcel to Plaintiff; the Public Utilities Commission seeking authorization from the  
16 Board of Supervisors to sell the PUC property, otherwise known as Assessor's Block 2719C,  
17 Lot 023, to Plaintiff; the City seeking a rezoning of the PUC Property from Public to  
18 Residential Mixed Use Low Density (RM-1) and the Public Works Property to RM-1; Plaintiff  
19 agreeing to purchase the parcels for \$1,500,000, the full appraised value at the time the  
20 lawsuit was filed; Plaintiff agreeing to pay \$100,000 of the City's administrative costs; and on  
21 such other material terms as are set forth in the Settlement Agreement and the Agreement for  
22 Sale of Real Estate (attached as Exhibit C to the Settlement Agreement), contained in Board  
23 of Supervisors File No. 171004. The ordinance authorizing the City and County of San  
24 Francisco to settle the action by the material terms as set forth in the Settlement Agreement is  
25 contained in Board of Supervisors File No. 171004.

1 (b) Pursuant to the Settlement Agreement, a companion ordinance vacates the Public  
 2 Works Property and approves the sale of the Public Works Property and PUC Property to  
 3 Plaintiff, pursuant to the Agreement for Sale of Real Estate (attached as Exhibit C to the  
 4 Settlement Agreement). This vacation ordinance is contained in Board of Supervisors File  
 5 No. 171004.

6  
 7 Section 3. The Planning Code is hereby amended by revising the Zoning Map of the  
 8 City and County of San Francisco as follows:

<u>Description of Property</u>	<u>Use District to be Superseded</u>	<u>Use District Hereby Approved</u>
Block 2719C, Lot 023	P	RM-1
Burnett Avenue North (portion of Burnett Avenue North generally bounded by AB 2745 Lot 036 and AB 2719C Lot 023)	Street (N/A)	RM-1

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 17 Section 4. Effective Date. This ordinance shall become effective 30 days after  
 18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
 19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
 20 of Supervisors overrides the Mayor's veto of the ordinance.

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

By: \_\_\_\_\_  
ROBB W. KAPLA  
Deputy City Attorney

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