

1 [Development Agreement - FC Pier 70, LLC - Pier 70 Development Project]

2

3 **Ordinance approving a Development Agreement between the City and County of San**  
4 **Francisco and FC Pier 70, LLC, for 28 acres of real property located in the southeast**  
5 **portion of the larger area known as Seawall Lot 349 or Pier 70; and bounded generally**  
6 **by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the**  
7 **north and east; waiving certain provisions of the Administrative Code, Planning Code,**  
8 **and Subdivision Code; and adopting findings under the California Environmental**  
9 **Quality Act, public trust findings, and findings of consistency with the General Plan,**  
10 **and the eight priority policies of Planning Code, Section 101.1(b).**

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

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

19 Section 1. Background and Findings.

20 (a) California Government Code Sections 65864 et seq. (“Development Agreement  
21 Law”) authorize any city, county, or city and county to enter into an agreement for the  
22 development of real property within its jurisdiction.

23 (b) Chapter 56 of the Administrative Code sets forth certain procedures for  
24 processing and approving development agreements in the City and County of San Francisco  
25 (the “City”).

(c) In April 2011, the Port Commission (the “Port”) selected Forest City  
Development California, Inc., a California corporation, through a competitive process to

1 negotiate exclusively for the mixed-use development (the “Project”) of approximately 28 acres  
2 (the “28-Acre Site”) of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded  
3 generally by Illinois Street on the west, 22<sup>nd</sup> Street on the south, and San Francisco Bay on  
4 the north and east commonly known as Pier 70. Forest City Development California, Inc. is  
5 now wholly owned by Forest City Realty Trust, Inc., a New York Stock Exchange-listed real  
6 estate company. FC Pier 70, LLC (“Developer”), a wholly-owned an affiliate of Forest City  
7 Realty Trust, Inc., Development California, Inc., will act as the master developer for the  
8 Project. (“Developer”).

9 (d) In conjunction with this ordinance, the Board of Supervisors has taken or intends  
10 to take a number of other actions in furtherance of the Project, including approval of: (1) a  
11 trust exchange agreement between the Port and the California State Lands Commission; (2) a  
12 disposition and development agreement (“DDA”) between Developer and the Port;  
13 (3) amendments to the General Plan; (4) amendments to the Planning Code that create the  
14 Pier 70 Special Use District (the “SUD amendments”) over the 28-Acre Site and two adjacent  
15 parcels known as the “Illinois Street Parcels” and incorporate more detailed land use controls  
16 of the Pier 70 SUD Design for Development; (5) amendments to the Zoning Maps;  
17 (6) approval of a development plan for the 28-Acre Site in accordance with Charter  
18 Section B7.310 (adopted as part of Proposition D, November 2008) and Section 4 of the  
19 Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative  
20 (Proposition F, November 2014); (7) a memorandum of understanding for interagency  
21 cooperation among the Port, the City, and other City agencies (the “ICA”) with respect to the  
22 subdivision of the 28-Acre Site and construction of infrastructure and other public facilities;  
23 (8) formation proceedings for financing districts and a memorandum of understanding  
24 between the Port and the Assessor, the Treasurer-Tax Collector, and the Controller regarding  
25 the assessment, collection, and allocation of ad valorem and special taxes to the financing

1 districts; and (9) a number of related transaction documents and entitlements to govern the  
2 Project.

3 (e) At full build-out, the Project will include: (1) 1,100 to 2,150 new residential units,  
4 at least 30% of which, in the Affordable Housing Area that includes the 28-Acre Site and a  
5 portion of the 20th/Illinois Parcel, will be on-site housing affordable to a range of low- to  
6 moderate-income households as described in the Affordable Housing Plan in the DDA;  
7 (2) between 1 million and 2 million gross square feet of new commercial and office space;  
8 (3) rehabilitation of three significant contributing resources to the historic district; (4) space for  
9 small-scale manufacturing, retail, and neighborhood services; (5) transportation demand  
10 management on-site, a shuttle service, and payment of impact fees to the Municipal  
11 Transportation Agency that it will use to improve transportation connections through the  
12 neighborhood; (6) 9 acres of new open space, potentially including active recreation on  
13 rooftops, a playground, a market square, a central commons, and waterfront parks along the  
14 shoreline; (7) on-site strategies to protect against sea level rise; and (8) replacement studio  
15 space for artists leasing space in Building 11 in Pier 70 and a new arts space.

16 (f) While the DDA binds the Port and Developer, other City agencies retain a role in  
17 reviewing and issuing certain later approvals for the Project. Later approvals include approval  
18 of subdivision maps and plans for horizontal improvements and public facilities, design review  
19 and approval of new buildings under the SUD amendments, and acceptance of Developer's  
20 dedications of horizontal improvements and public facilities for maintenance and liability under  
21 the Subdivision Code. Accordingly, the City and Developer negotiated a development  
22 agreement for the Project (the "Development Agreement"), a copy of which is in Board File  
23 No. 170863 and incorporated in this ordinance by reference. The DDA, the Development  
24 Agreement, the ICA, the Tax MOU, and all leases and vertical disposition development  
25

1 agreements that the Port enters into in accordance with the DDA are referred to collectively as  
2 the “Transaction Documents.”

3 (g) Development of the 28-Acre Site in accordance with the DDA and the  
4 Development Agreement will help realize and further the City’s goals to restore and revitalize  
5 the Union Iron Works Historic District, increase public access to the waterfront, increase  
6 public open space and community facilities within the neighborhood, increase affordable and  
7 market-rate housing, and create a significant number of construction and permanent jobs  
8 along the southeastern waterfront. In addition, the Project will provide additional benefits to  
9 the public that could not be obtained through application of existing City ordinances,  
10 regulations, and policies.

11 Section 2. Environmental Findings.

12 (a) The Planning Department has determined that the actions contemplated in this  
13 ordinance comply with the California Environmental Quality Act (Cal. Public Resources Code  
14 §§ 21000 et seq.) (“CEQA”). A copy of this determination is in Board File No. 170863 and  
15 incorporated in this ordinance by reference.

16 (b) The Board of Supervisors previously adopted Resolution No. \_\_\_\_\_, a  
17 copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board  
18 of Supervisors adopts and incorporates in this ordinance by reference the Planning  
19 Commission’s findings under CEQA.

20 Section 3. Consistency Findings.

21 The Planning Commission recommended that the Board of Supervisors approve the  
22 Development Agreement and amendments to the General Plan, the Planning Code, and the  
23 Zoning Maps at a public hearing on August 24, 2017, by Resolution Nos. 19978 and 19979, a  
24 copy/copies of which is/are in Board File No. 170863. The Board of Supervisors adopts and  
25 incorporates by reference in this ordinance the Planning Commission’s findings of consistency

1 with the General Plan, as amended, and the eight priority policies of Planning Code  
2 Section 101.1.

3 Section 4. Public Trust Findings.

4 At a public hearing on September 12~~26~~, 2017, the Port Commission consented to the  
5 Development Agreement and approved the trust exchange agreement and the DDA, subject  
6 to Board of Supervisors' approval, finding that the Project would be consistent with and further  
7 the purposes of the common law public trust and statutory trust under the Burton Act (Stats.  
8 1968, ch. 1333) by Resolution Nos. 17-44 and 17-47, ~~a copy~~ copies of which ~~is~~ are in Board  
9 File No. 170863. The Board of Supervisors adopts and incorporates in this ordinance by  
10 reference the Port Commission's public trust findings.

11 Section 5. Approval of Development Agreement.

12 The Board of Supervisors:

13 (a) approves all of the terms and conditions of the Development Agreement in  
14 substantially the form in Board File No. 170863;

15 (b) finds that the Development Agreement substantially complies with the  
16 requirements of Administrative Code Chapter 56;

17 (c) finds that the Project is a large multi-phase and mixed-use development that  
18 satisfies Administrative Code Section 56.3(g); and

19 (d) approves the Workforce Development Plan attached to the DDA in lieu of  
20 requirements under Administrative Code Chapter 14B, Article VII of Chapter 23,  
21 and Section 56.7(c), and Chapter 83 to the extent that Chapter 83 applies to construction work  
22 that is subject to the Local Hiring Requirements of the Workforce Development Plan.

1 Section 6. Administrative Code Chapter 56 Waivers.

2 The Board of Supervisors waives the application to the Project of the following  
3 provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development  
4 Agreement, the DDA, or the ICA, specifically:

5 (a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c)  
6 (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10  
7 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination);  
8 Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and  
9 Section 56.20 (Fee); and

10 (b) any other procedural or other requirements if and to the extent that they are not  
11 strictly followed.

12 Section 7. Other Administrative Code Waivers.

13 The Board of Supervisors waives the application to the Project of these provisions of  
14 the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures)  
15 other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local  
16 Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Competitive  
17 Bidding Procedures appraisal effective date, and Additional Appraisal Review as defined in  
18 Section 23.3 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition  
19 of Real Property); (d) Section 23.2623.31 (Year-to-Year and Shorter  
20 Leases); (e) Section 23.30-23.42 (Lease of Real Property When City is Landlord);  
21 (f) Sections 23.33 (Competitive Bidding Procedures); (fg) Section 23A.7 (Transfer of  
22 Jurisdiction Over Surplus Properties to the Mayor's Office of Housing and Community  
23 Development); and (gh) Subsection (c)(2) of Section 61.5(e)(2) (Listing of Unacceptable Non-  
24 Maritime Land Uses); and (i) remedies and penalties for noncompliance with Section 4.9-1(c)  
25 (Nutritional Standards and Guidelines), Section 12Q.5(f) (Health Care Accountability), or

1 Section 12T (Criminal History in Hiring and Employment) that would result in termination of  
2 any Transaction Document, impairment of Developer's or any vertical developer's  
3 development rights at the 28-Acre Site, or debarment of Developer or any vertical developer  
4 from future contract opportunities with the City.

5 Section 8. Planning Code Waivers.

6 The Board of Supervisors:

7 (a) finds that the impact fees and exactions payable under the Development  
8 Agreement will provide greater benefits to the City than the impact fees and exactions under  
9 Planning Code Article 4 and waives the application of, and to the extent applicable exempts  
10 the Project from, impact fees and exactions under Planning Code Article 4 on the condition  
11 that Developer and all building developers comply with impact fees and exactions established  
12 in the Development Agreement; and

13 (b) finds that the Transportation Plan attached to the Development  
14 Agreement includes a Transportation Demand Management Plan ("TDM Plan") and other  
15 provisions that meet the goals of the City's Transportation Demand Management Program in  
16 Planning Code Section 169 and waives the application of Section 169 to the Project on the  
17 condition that Developer implements and complies with the TDM Plan for the required  
18 compliance period.

19 Section 9. Subdivision Code Waivers.

20 (a) The Board of Supervisors waives the application to the Project of time  
21 limits under Subdivision Code ~~Section 1333.3(b) (Rights Conveyed)~~, Section 1346(e)  
22 (Improvement Plans) and Section 1355 (Time Limit for Submittal) to the extent that they  
23 conflict with the ICA or the Development Agreement.

24 (b) The Board of Supervisors also waives the application to the Project of  
25 Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time).

1 and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as  
2 defined in the ICA, shall include provisions consistent with the Transaction Documents and  
3 the applicable requirements of the Municipal Code and the Subdivision Regulations regarding  
4 extensions of time and remedies that apply when improvements are not completed within the  
5 agreed time.

6 Section 10. Authorization.

7 (a) The Board of Supervisors affirms that the waivers in this ordinance do not waive  
8 requirements under the Development Agreement Law and authorizes the City to execute,  
9 deliver, and perform the Development Agreement as follows:

10 (1) the Director of Planning, the City Administrator, and the Director of Public  
11 Works are authorized to execute and deliver the Development Agreement with signed  
12 consents of the Port Commission, the Municipal Transportation Agency, and the San  
13 Francisco Public Utilities Commission; and

14 (2) the Director of Planning and other appropriate City officials are authorized  
15 to take all actions reasonably necessary or prudent to perform the City's obligations under the  
16 Development Agreement in accordance with its terms.

17 (b) The Director of Planning is authorized to exercise discretion, in consultation with  
18 the City Attorney, to enter into any additions, amendments, or other modifications to the  
19 Development Agreement that the Director of Planning determines are in the best interests of  
20 the City and that do not materially increase the obligations or liabilities of the City or materially  
21 decrease the benefits to the City as provided in the Development Agreement. Final versions  
22 of any additions, amendments, or other modifications to the Development Agreement shall be  
23 provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 170863 within  
24 30 days after execution by all parties.



1 Section 11. Ratification of Past Actions; Authorization of Future Actions.

2 All actions taken by City officials in preparing and submitting the Development  
3 Agreement to the Board of Supervisors for review and consideration are hereby ratified and  
4 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
5 by City officials consistent with this ordinance.

6 Section 12. Effective and Operative Dates.

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

11 (b) This ordinance shall become operative only on the effective date of the DDA. No  
12 rights or duties are created under the Development Agreement until the operative date of this  
13 ordinance.

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17  
18 By: \_\_\_\_\_  
19 JOANNE SAKAI  
20 Deputy City Attorney

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