

BOARD of SUPERVISORS



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August 5, 2019

File No. 190838

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On July 30, 2019, Mayor Breed submitted the proposed legislation:

File No. 190838

Ordinance delegating to the Director of Public Works the authority to accept certain required public infrastructure improvements for purposes of City maintenance and liability, including streets, parks, and pump stations, in the Mission Bay South Redevelopment Plan and waiving Administrative Code, Sections 1.51 et seq., to implement the delegation; authorizing the Director of the Real Estate Division to enter into extended term public use licenses for these improvements and waiving Administrative Code, Chapter 23, for that purpose; and adopting findings pursuant to the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Mission Bay South - Delegation to Accept Public Infrastructure Improvements]

2
3 **Ordinance delegating to the Director of Public Works the authority to accept certain**
4 **required public infrastructure improvements for purposes of City maintenance and**
5 **liability, including streets, parks, and pump stations, in the Mission Bay South**
6 **Redevelopment Plan and waiving Administrative Code, Sections 1.51 et seq., to**
7 **implement the delegation; authorizing the Director of the Real Estate Division to enter**
8 **into extended term public use licenses for these improvements and waiving**
9 **Administrative Code, Chapter 23, for that purpose; and adopting findings pursuant to**
10 **the California Environmental Quality Act.**

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. Definitions and Environmental Findings.

20 (a) All capitalized terms relating to Mission Bay in this ordinance have the definitions
21 ascribed to them pursuant to the Mission Bay South Redevelopment Plan and Plan
22 Documents described therein, that the City approved in 1988 in Ordinance No. 335-98, a copy
23 of which is on file with the Clerk of the Board of Supervisors in File No. 981441.

24 (b) The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources
Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. _____ and is incorporated herein by reference. The Board
2 affirms this determination.

3
4 Section 2. Mission Bay South Public Works Determination of Completeness for Public
5 Infrastructure Improvements.

6 (a) In Public Works ("PW") Order No. _____, dated _____, 2019,
7 the PW Director, stated that Public Works (also "PW") issued multiple determinations of
8 completion ("DOCs") for various Public Infrastructure Improvements in Mission Bay South
9 (also referred to as "Improvements"). As specified in the Public Improvement Agreements for
10 the subject Improvements, the PW DOCs found that the required Improvements have been
11 constructed in accordance with the Project Plans and Specifications and all City codes,
12 regulations, standards, and Mission Bay South Redevelopment Plan and Plan Documents
13 governing this development; and that such Improvements are ready for their intended use.
14 The Board of Supervisors' acceptance of these Public Infrastructure Improvements for
15 purposes of City maintenance and liability is pending submission of a variety of materials from
16 FOCIL-MB, LLC ("FOCIL"), the Owner and master developer, and City department review of
17 such materials, including as-built plans, maps, and other documents. To expedite such
18 acceptance, the PW Order recommends that the Board of Supervisors delegate the authority
19 to accept the Improvements to the PW Director along with other delegated authority as set
20 forth in this ordinance. The subject Public Infrastructure Improvements for delegated
21 acceptance authority are associated with the following:

22 (1) Block 1;

23 (2) Blocks 2-7;

24 (3) Blocks 8-9-9A, including Mission Rock Street and the adjacent portion of

25 Terry Francois Boulevard;

- 1 (4) Blocks 11-12;
- 2 (5) Blocks 26-28 Phases 1, 2, and 3;
- 3 (6) Blocks 36-39;
- 4 (7) Block 40;
- 5 (8) Terry Francois Boulevard between Mariposa and 16th Streets; and
- 6 (9) Stormwater Pump Station No. 1.

7 (b) As to the Public Infrastructure Improvements listed above and in accordance with
8 the Mission Bay South Acquisition Agreement, the PW Director in PW Order No.
9 _____, identified certain outstanding PW punchlist items and certain San Francisco
10 Public Utilities Commission (SFPUC”) Phase II work as described in Exhibit C of the
11 Acquisition Agreement (collectively, “PW Punchlist Work and SFPUC Phase II Work”). This
12 PW Order recommends that despite the PW Punchlist Work and SFPUC Phase II Work, the
13 City should proceed toward acceptance of the Public Infrastructure Improvements for City
14 maintenance and liability purposes subject to the review and approval of all required
15 documents, future City work to address the PW Punchlist Work and SFPUC Phase II Work
16 that will occur post-acceptance, and reimbursement for all eligible costs from Acquisition
17 Funds to the extent such Funds are available. The PW Order acknowledges that the
18 reimbursement from Acquisition Funds shall be consistent with the enforceable obligations of
19 the Successor Agency to the San Francisco Redevelopment Agency, commonly known as the
20 Office of Community Infrastructure and Investment (“OCII”), and subject to any necessary
21 authorization from the California Department of Finance. This PW Order is on file with the
22 Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by
23 reference.

24 (c) This PW Order No. _____ also authorizes the termination of posted
25 performance and labor and materials bonds (in general, the “Security”) for the following Public

1 Infrastructure Improvements: (1) Blocks 2-7; Blocks 8-9-9A; Blocks 11-12; Block 12 midblock;
2 Blocks 26-28 Phases 1, 2, and 3; Blocks 33-34; Blocks 36-39; and Block 40; (2) Stormwater
3 Pump Station Nos. 1 and 5; (3) Parks P2 all phases, P5, P8, P11-11A, P19, P23-24, and P27;
4 (4) Fifth and King Street Intersection Improvements in Mission Bay North, and (5) those Public
5 Infrastructure Improvements where construction has not yet started until such time as the City
6 approves 100% improvement plans for such Public Infrastructure Improvements based on
7 having alternate adequate Security. The PW Director finds that there is alternative Security
8 available through the Mission Bay South Acquisition Funds should such Security be
9 necessary to complete construction of the projects for the Public Infrastructure Improvements
10 shown in this subsection (c) as items (1)-(4). For the Public Infrastructure Improvements
11 referenced in item (5) of this subsection (c), which include future Parks P13 and P15 and the
12 pedestrian bridge over the Mission Bay Channel, the PW Director, in the Director's discretion,
13 will make a determination as to whether new Security shall be posted at the time the permits
14 for such Public Infrastructure Improvements are submitted or whether alternate Security
15 remains available to cover such costs.

16 (d) The San Francisco Public Utilities Commission, on _____, 2019,
17 adopted Resolution No. _____. Said resolution approved the terms of the PW Order
18 No. _____ in regard to the SFPUC Phase II Work that involves future Public Utilities
19 Commission work subject to reimbursement under the conditions specified in the PW Order.
20 A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No.
21 _____ and is incorporated herein by reference.

22 (e) In companion legislation, the Board of Supervisors accepted for purposes of City
23 maintenance and liability the following projects for which the PW Director issued a DOC as
24 stated above: (1) Stormwater Pump Station No. 5 and (2) Parks P2 Parking Lot, P11-11A, and
25 P23-24. The companion legislation is on file with the Clerk of the Board of Supervisors in File

1 Nos. 190754 and 190755, respectively.

2
3 Section 3. Recommendation to Delegate to Public Works Acceptance of Existing and
4 Future Public Infrastructure Improvements for City Maintenance and Liability Purposes in
5 Mission Bay South.

6 (a) Findings.

7 (1) In PW Order No. _____ dated _____, 2019, the PW
8 Director recommended that the Board of Supervisors delegate to the Director, in consultation
9 with other affected City departments, the authority to: (A) accept certain required Public
10 Infrastructure Improvements for City maintenance and liability purposes that have been or will
11 be constructed in accordance with the Project Plans and Specifications and all City codes,
12 regulations, standards, and Mission Bay South Redevelopment Plan and Plan Documents
13 governing this development (i) when the PW Director determines that such Public
14 Infrastructure Improvements are ready for their intended use and (ii) when FOCIL has
15 submitted all required documents for acceptance and the City has reviewed and approved
16 such documents; (B) acknowledge the Conditional Assignment of Warranties and Guaranties
17 on behalf of the Board of Supervisors in accordance with the Mission Bay South Acquisition
18 Agreement subject to certain exceptions specified below; (C) dedicate to public use and as
19 open public right-of-way the Public Infrastructure Improvements that have been constructed
20 and designate such Improvements for street and roadway purposes or park and open space
21 only, depending on the type of Improvement; and (D) take all other official acts necessary for
22 or related to acceptance of the Public Infrastructure Improvements. Such official acts include,
23 but are not limited to, changing or adopting sidewalk and public right-of-way widths, adopting
24 any related official PW maps, and excluding from the acceptance action any permitted or
25 unpermitted encroachments and the maintenance responsibility of fronting property owners

1 pursuant to the Public Works Code, including, but not limited to, Public Works Code Section
2 706. The delegation of Public Infrastructure Acceptance and other official City actions related
3 to it require a waiver to Administrative Code Section 1.51 in regard to following the general
4 laws of California for establishment or change of street grades and a waiver of Administrative
5 Code Section 1.52 in regard to the procedural step of the Board of Supervisors accepting
6 Public Infrastructure Improvements.

7 (2) The PW Director's recommendation for delegated authority to accept Public
8 Infrastructure Improvements for City maintenance and liability purposes and take the other
9 actions specified in the PW Order No. _____ applies to the following:

10 (A) The Public Infrastructure Improvements identified as items (1)-(9) of
11 Section 2(a) of this ordinance.

12 (B) The Public Infrastructure Improvements for which PW has issued
13 permits to FOCIL, which has started construction of the Public Infrastructure Improvements
14 for:

15 (i) Blocks 33-34;

16 (ii) Block 12 Mid-Block; and

17 (iii) Park P22.

18 (C) The Public Infrastructure Improvements for which Public Works has
19 issued permits and FOCIL will commence work on such Public Infrastructure Improvements in
20 fiscal year 2019-2020 for:

21 (i) Park P3;

22 (ii) Park P19;

23 (iii) Park P27; and

24 (iv) Stormwater Pump Station No. 3.

25 ///

1 (3) The PW Director recommends that the Board of Supervisors waive the
2 requirement for FOCIL's Conditional Assignment of Warranties and Guaranties for items (1)-
3 (9) of Section 2(a) of this ordinance with the exception of FOCIL's exclusive work on Terry
4 Francois Boulevard between Mariposa and 16th Streets as otherwise required under Section
5 4.3(c) of the Mission Bay South Acquisition Agreement. In addition, the PW Director
6 recommends that the Board of Supervisors waive the requirement for FOCIL's Conditional
7 Assignment of Warranties and Guaranties for Parks P2 Parking Lot, P11-11A, and P23-24,
8 which is the subject of companion legislation on file with the Clerk of the Board of Supervisors
9 in File No. 190755.

10 (4) PW Order No. _____ also recognizes that acceptance of Public
11 Infrastructure Improvements for City maintenance and liability purposes is subject to the
12 Acquisition Agreement dated June 1, 2001 by and between the San Francisco
13 Redevelopment Agency and Catellus Development Corporation and the post-acceptance
14 conditions of subsection (a)(5) of Section 3 of this ordinance. In addition, acceptance requires
15 PW's receipt of: (A) an OCII determination that the acceptance of the Mission Bay South
16 Public Infrastructure Improvements is consistent with the Mission Bay South Redevelopment
17 Plan (the "Plan") and Plan Documents and (B) a Planning Department letter determining that
18 the acceptance of the Public Infrastructure Improvements is, on balance, in conformance with
19 the General Plan and the eight priority policies of Planning Code Section 101.1 and does not
20 trigger the need for subsequent environmental review pursuant to the California
21 Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et
22 seq.).

23 (5) Further, the PW Order No. _____ recommends that despite the
24 PW Punchlist Work and SFPUC Phase II Work associated with the Public Infrastructure
25 Improvements, the City should proceed toward acceptance of the Public Infrastructure

1 Improvements for City maintenance and liability purposes subject to the City's review and
2 approval of all required documents, addressing any outstanding provisions of applicable
3 public improvement agreements and street improvement permits, future City work to address
4 the punchlist items and deferred improvements, reimbursement for all eligible costs from
5 Acquisition Funds to the extent such Funds are available, and other conditions.

6 (6) Public Works Order No. _____ recommends a delegation to the
7 Director of the Real Estate Division ("RED") authority to enter into an extended license for
8 public use of the Public Infrastructure Improvements specified in this ordinance where PW has
9 issued or will issue a DOC but prior to acceptance for City maintenance and liability purposes.
10 This delegation requires a waiver of Administrative Code Chapter 23 to allow the initial terms
11 of such licenses to be for period not to exceed five years, and thereafter followed by annual
12 extensions after the initial term until the time of acceptance.

13 (b) The general basis for the recommendation in PW Order No. _____ is to
14 allow for expedited processing for City acceptance of completed Public Infrastructure
15 Improvements required under the Mission Bay South Redevelopment Plan. Copies of the PW
16 issued permits and plans for the Public Infrastructure Improvements identified as items (1)-(9)
17 of Section 2(a) of this ordinance and identified in subsection (a)(2)(B) and (C) of this Section 3
18 are on file with Public Works Bureau of Street Use and Mapping at 1155 Market Street, 3rd
19 Floor. A copy of PW Order No. _____ is on file with the Clerk of the Board of
20 Supervisors in File No. _____ and is incorporated by reference herein.

21
22 Section 4. Delegation to Public Works the Authority to Accept Public Infrastructure
23 Improvements for City Maintenance and Liability Purposes in Mission Bay South.

24 (a) The Board of Supervisors adopts the recommendations of the Public Works
25 Director in PW Order No. _____. Based on these recommendations, the Board of

1 Supervisors determines that it would be efficient and in the public interest to eliminate the
2 need for future Board actions related to accepting certain Public Infrastructure Improvements
3 in Mission Bay South by delegating to the PW Director the authority, upon completion of these
4 future Public Infrastructure Improvements and the satisfaction of other conditions, to dedicate
5 the Public Infrastructure Improvements to public use, designate the Public Infrastructure
6 Improvements for street and roadway purposes or park and open space use only depending
7 on the Improvement, change or adopt sidewalk widths, adopt any related official PW maps,
8 and accept the Public Infrastructure Improvements for City maintenance and liability
9 purposes, subject to an exception for any permitted or unpermitted encroachments and the
10 maintenance responsibility of fronting property owners pursuant to the Public Works Code,
11 including, but not limited to, Public Works Code Section 706, along with other actions
12 necessary for or related to acceptance of the Public Infrastructure Improvements.

13 (b) Delegation to the PW Director Certain Authority in Regard to Accepting and
14 Designating Required Public Infrastructure Improvements; Delegation to the Director of RED
15 to Enter into Licenses for Public Use of Such Improvements.

16 (1) Notwithstanding Administrative Code Sections 1.51 et seq. and in
17 furtherance of California Streets and Highways Code Section 1806 and the Acquisition
18 Agreement dated June 1, 2001 by and between the San Francisco Redevelopment Agency
19 and Catellus Development Corporation, the Board of Supervisors hereby delegates to the PW
20 Director, in consultation with other affected City departments and subject to the conditions set
21 forth in this ordinance, the authority to: (A) dedicate for public use and as open public right-of-
22 way the Public Infrastructure Improvements identified as items (1)-(9) of Section 2(a) of this
23 ordinance and identified in subsection (a)(2)(B) and (C) of Section 3 of this ordinance; (B)
24 designate such Public Infrastructure Improvements for street and roadway purposes or park
25 and open space use only depending the type of Improvement; (C) change or adopt sidewalk

1 widths; (D) accept such Public Infrastructure Improvements for City maintenance and liability
2 purposes, subject to an exception for any permitted or unpermitted encroachments and the
3 maintenance responsibility of fronting property owners pursuant to the Public Works Code,
4 including, but not limited to, Public Works Code Section 706; (E) address the PW Punchlist
5 Work and SFPUC Phase II Work as identified in PW Order No. _____ post-
6 acceptance, including the issuance of any permits or authorizations related to this work; (F)
7 obtain FOCIL's Conditional Assignment of all Warranties and Guaranties for those
8 Improvements identified in subsection (a)(2)(B) and (C) of Section 3 of this ordinance and for
9 FOCIL's exclusive work on Terry Francois Boulevard between Mariposa and 16th Streets; (G)
10 adopt any related official PW maps for such Improvements, and (H) accept FOCIL's
11 irrevocable offers for such Public Infrastructure Improvements in substantially similar form to
12 those on file with the Clerk of the Board in File Nos. 190754 and 19075. The Board of
13 Supervisors also delegates the authority to the PW Director to take other actions as specified
14 in PW Order No. _____ that are necessary for or related to acceptance of such
15 Public Infrastructure Improvements, including, but not limited to, the adoption of sidewalk
16 width and public right-of-way width and official maps.

17 (2) The Board of Supervisors hereby waives the requirement under Section
18 4.3(c) of the Mission Bay South Acquisition Agreement for FOCIL's Conditional Assignment of
19 Warranties and Guaranties for items (1)-(9) of Section 2(a) of this ordinance, with the
20 exception of FOCIL's exclusive work on Terry Francois Boulevard between Mariposa and 16th
21 Streets, and for Parks P2 Parking Lot, P11-11A, and P23-24, which is the subject of
22 companion legislation on file with the Clerk of the Board of Supervisors in File Nos. 190754.

23 (3) Notwithstanding Administrative Code Sections 1.51 et seq. and California
24 Streets and Highways Code Sections 8000 et seq., the Board of Supervisors hereby
25 delegates to the PW Director, in consultation with other affected City departments, the

1 authority to change or establish new street grades for the streets that are the subject of this
2 ordinance.

3 (4) The Board authorizes the Director of RED to enter into an extended license
4 for public use of the Public Infrastructure Improvements specified in this ordinance where PW
5 has issued or will issue a DOC but prior to acceptance for City maintenance and liability
6 purposes. Notwithstanding Administrative Code Chapter 23, the initial terms of such licenses
7 may be for period not to exceed five years, and thereafter followed by annual extensions after
8 the initial term until the time of acceptance.

9 (5) The PW Director's action to accept Public Infrastructure Improvements for
10 City maintenance and liability purposes shall be done by PW Order. Within 30 days of issuing
11 a PW Order for this purpose, the PW Director shall forward the PW Order to the Clerk of the
12 Board of Supervisors to be included in Board File No. _____ for purposes of this
13 ordinance.

14
15 Section 5. Official Acts in Furtherance of the Ordinance. The Board of Supervisors
16 authorizes the Directors of PW and RED, in consultation with the City Attorney's Office, to
17 take all actions necessary to implement this ordinance, including, but not limited to finalizing
18 licenses for public use and completing other actions including the filing of the City's Official
19 Maps related to street right-of-way and sidewalk changes.

20
21 Section 6. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board

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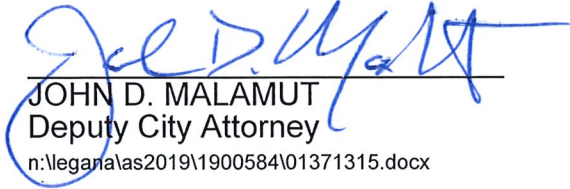
1 of Supervisors overrides the Mayor's veto of the ordinance.

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

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6 By:


JOHN D. MALAMUT
Deputy City Attorney
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LEGISLATIVE DIGEST

[Mission Bay South - Delegation to Accept Public Infrastructure Improvements]

Ordinance delegating to the Director of Public Works the authority to accept certain required public infrastructure improvements for purposes of City maintenance and liability, including streets, parks, and pump stations, in the Mission Bay South Redevelopment Plan and waiving Administrative Code, Sections 1.51 et seq., to implement the delegation; authorizing the Director of the Real Estate Division to enter into extended term public use licenses for these improvements and waiving Administrative Code, Chapter 23, for that purpose; and adopting findings pursuant to the California Environmental Quality Act.

Existing Law

California Streets and Highways Code and Administrative Code Sections 1.51 et seq., establish the process for San Francisco to dedicate and accept public improvements, including public streets and other types of public right-of-ways, such as parks and open space. Requirements related to the scope, construction, approval, and public dedication and acceptance of public improvements in Mission Bay South also are governed by the Mission Bay South Redevelopment Plan and Plan documents such as the Mission Bay South Infrastructure Plan, Acquisition Agreement, and Interagency Cooperation Agreement.

Amendments to Current Law

This legislation would delegate to the Director of Public Works the authority to accept for City maintenance and liability purposes certain required public improvements in the Mission Bay South Redevelopment Plan that have been constructed or currently are under construction. The Ordinance would allow the Director to accept specified public improvements subject to the City performing subsequent work on those improvements and being reimbursed through Mission Bay South Acquisition Funds. The legislation also would authorize the Director of Property to accept extended licenses between FOCIL and the City to allow public access or use prior to acceptance of the public improvements. The legislation provides for the waiver of the assignment of specified warranties and guaranties. The Ordinance would adopt environmental findings.