

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: June 26, 2023  
To: Planning Department  
From: Stephanie Cabrera, Clerk of the Government Audit and Oversight  
Subject: Board of Supervisors Legislation Referral - File No. 221163  
Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain  
Administrative Code Waivers.

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan
  - Planning Code, Section 101.1
  - Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Planning Department Referral  
June 26, 2023

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Please send the Planning Department determination to Stephanie Cabrera at [Stephanie.Cabrera@sfgov.org](mailto:Stephanie.Cabrera@sfgov.org)

1 [Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain Administrative  
2 Code Waivers]

3 **Ordinance approving a Development Agreement between the City and County of San**  
4 **Francisco and 98 Franklin Street, LLC, for certain real property at 98 Franklin Street**  
5 **(Assessor's Parcel Block No. 0836, Lot Nos. 008, 009, and 013), consisting of three**  
6 **parcels located in the Van Ness & Market Residential Special Use District on the east**  
7 **side of Franklin Street, between Oak and Market Streets; waiving certain provisions of**  
8 **Administrative Code, Chapter 56; adopting findings under the California Environmental**  
9 **Quality Act; and making findings of conformity with the General Plan, and the eight**  
10 **priority policies of Planning Code, Section 101.1(b), and findings of public necessity,**  
11 **convenience, and general welfare 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. Project Findings.

21 The Board of Supervisors makes the following findings:

22 (a) California Government Code Sections 65864 et seq. authorizes any city, county,  
23 or city and county to enter into an agreement for the development of real property within its  
24 respective jurisdiction.

25 (b) Administrative Code Chapter 56 ("Chapter 56") sets forth certain procedures for  
the processing and approval of development agreements in the City and County of San  
Francisco (the "City").

1 (c) 98 Franklin Street, LLC, a California limited liability company (the "Developer"),  
2 is the owner of that certain real property located at 98 Franklin Street (Assessor's Parcel  
3 Block No. 0836, Lots 008, 009, and 013; the "Project Site"), which is an irregularly shaped  
4 property formed by three parcels totaling approximately 23,750 square feet, located on the  
5 east side of Franklin Street, between Oak and Market Streets in the Van Ness & Market  
6 Residential Special Use District.

7 (d) On May 21, 2020, the Planning Commission approved Resolution Nos. 20709  
8 through 20712 and 20614, and Motion No. 20707; and on May 28, 2020, the Planning  
9 Commission approved Motion Nos. 20726 through 20728 (collectively, the "Approvals"). The  
10 Approvals entitled the Project Site for a new 36-story mixed-use building reaching a height of  
11 approximately 365 feet (and approximately 397 feet including rooftop screen/mechanical  
12 equipment), with 345 dwelling units, approximately 84,815 gross square feet of school use  
13 floor area, approximately 3,229 gross square feet of retail space, 306 Class 1 and 57 Class 2  
14 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle  
15 parking spaces for the residential and school uses (the "Project"). The Approvals restrict 20%  
16 of the Project's dwelling units as affordable. The Approvals are on file with the Planning  
17 Department, located at 49 South Van Ness, Suite 1400, San Francisco, CA 94103.

18 (e) On November 21, 2022, the Developer submitted to the Planning Department a  
19 request to amend the Approvals and enter into a development agreement to (1) increase the  
20 Project's height limit to 400 feet (excluding permitted rooftop screen/mechanical equipment),  
21 (2) increase the number of dwelling units to 385, (3) permit a land dedication to the City of real  
22 property at 600 Van Ness Avenue (Block 0763, Lots 006 through 009; the "Affordable Housing  
23 Site"), or other real property acceptable to the Mayor's Office of Housing and Community  
24 Development ("MOHCD"), exceeding the dwelling unit requirements of Planning Code Section  
25 249.33(b)(16), at no cost to the City, (4) waive all but one million dollars (\$1,000,000) of the

1 Project's applicable Market and Octavia Affordable Housing fee under Planning Code Section  
2 416 and waive all of the Project's applicable Van Ness Residential Special Use District  
3 Affordable Housing fee pursuant to Planning Code Section 424, with the intent that these  
4 funds be dedicated to Parcel K (located at the southeast corner of the intersection of Hayes  
5 Street and Octavia Boulevard, as described in the Market & Octavia Neighborhood Plan), and  
6 (5) vest the Project's Approvals for five years following the effective date of the development  
7 agreement (collectively, the "Approval Modifications").

8 (f) This ordinance does not constitute an approval of any new or revised project  
9 located at the Affordable Housing Site. In 2018, the Planning Department prepared a  
10 mitigated negative declaration for a 138-foot mixed use project encompassing 156,598 square  
11 feet of residential uses, 168 dwelling units, 6,241 square feet of ground floor commercial uses,  
12 and 22,900 square feet of parking at the Affordable Housing Site (Planning Department Case  
13 Number 2015-012729ENV). At the time, the Planning Commission adopted CEQA findings  
14 and a Mitigation and Monitoring Reporting Program ("MMRP") in its Motion No. 20196  
15 (Planning Department Case No. 2015-012729CUA) for the previously approved 168-unit  
16 project at the Affordable Housing Site. The CEQA findings and the MMRP contained in  
17 Planning Commission Motion No. 20196 are incorporated herein by this reference thereto, as  
18 applicable to the land dedication authorized by this ordinance. The City is not otherwise  
19 approving any changes to the approved project at 600 Van Ness Avenue. If and when any  
20 revised project for the Affordable Housing Site is undertaken, or is submitted to the City for  
21 review, the City will conduct any additional environmental review required by CEQA for that  
22 project.

23 (g) The City and Developer negotiated a development agreement to implement the  
24 Approval Modifications (the "Development Agreement"), a copy of which is on file with the  
25 Clerk of the Board of Supervisors in File No. 221163 and incorporated herein by reference.

1 (h) The Planning Department has determined that as a result of the development of  
2 the Project Site with the Approval Modifications in accordance with the Development  
3 Agreement, clear benefits to the public will accrue that could not be obtained through  
4 application of existing City ordinances, regulations, and policies, as more particularly  
5 described in the Development Agreement. Specifically, the Development Agreement will  
6 provide an affordable housing contribution to the City that will exceed the requirements of  
7 applicable City codes.

8 (i) On \_\_\_\_\_, 20\_\_, at a duly noticed public hearing, the Planning  
9 Commission approved (1) Resolution No. \_\_\_\_\_, recommending to the Board of  
10 Supervisors approval of the Approval Modifications, including changes to the Height Map and  
11 Planning Code (the "Companion Rezoning Legislation"), upon the effective date of the  
12 Development Agreement, and (2) Resolution No. \_\_\_\_\_, recommending to the Board  
13 of Supervisors approval of the Development Agreement. In addition, the Planning  
14 Commission, as part of Resolution No. \_\_\_\_\_, adopted findings that the Project,  
15 with the Approval Modifications, is, on balance, consistent with the General Plan and the eight  
16 priority policies of Planning Code Section 101.1 and adopted findings under Planning Code  
17 Section 302 that the Project will serve the public necessity, convenience, and general welfare  
18 (the "Planning Commission General Plan Consistency Findings"). The Planning Commission  
19 Resolutions referenced in this subsection (i) are on file with the Clerk of the Board in File No.  
20 221163 and incorporated into this ordinance.

21  
22 Section 2. California Environmental Quality Act Findings.

23 The Planning Commission in Resolution No. \_\_\_\_\_ also adopted  
24 environmental findings under the California Environmental Quality Act (California Public  
25 Resources Code Sections 21000 et seq.; "CEQA"), that the Project with the Approval

1 Modifications satisfied all the requirements of CEQA (the “Planning Commission CEQA  
2 Findings”). A copy of the Planning Commission CEQA Findings is on file with the Clerk of the  
3 Board of Supervisors in File No. \_\_\_\_\_. The Board of Supervisors incorporates the  
4 Planning Commission CEQA Findings into this ordinance, and adopts these finding as its  
5 own.

6  
7 Section 3. Public Necessity, General Plan, and Planning Code Section 101.1(b)  
8 Findings.

9 (a) The Board of Supervisors finds that the Development Agreement with the  
10 Approval Modifications will serve the public necessity, convenience, and general welfare in  
11 accordance with Planning Code Section 302 for the reasons set forth in Planning Commission  
12 Resolution No. \_\_\_\_\_ recommending approval of the Development Agreement.

13 (b) The Board of Supervisors finds that the Development Agreement with the  
14 Approval Modifications is, on balance, in conformity with the General Plan and the eight  
15 priority policies of Planning Code Section 101.1 for the reasons set forth in the Planning  
16 Commission General Plan Consistency Findings.

17  
18 Section 4. Approval of Development Agreement.

19 (a) The Board of Supervisors approves all of the terms and conditions of the  
20 Development Agreement, in substantially the form on file with the Clerk of the Board of  
21 Supervisors in File No. 221163.

22 (b) The Board of Supervisors approves and authorizes the execution, delivery, and  
23 performance by the City of the Development Agreement, subject to the Developer's payment  
24 of all City costs with respect to the Development Agreement. Upon receipt of the payment of  
25 the City's costs billed to the Developer, the Director of Planning and other City officials listed

1 thereon are authorized to execute and deliver the Development Agreement, and the Director  
2 of Planning and other applicable City officials are authorized to take all actions reasonably  
3 necessary or prudent to perform the City's obligations under the Development Agreement in  
4 accordance with the terms of the Development Agreement and Chapter 56, as applicable.  
5 Without limiting the foregoing, MOHCD is authorized to take all actions necessary or prudent  
6 to accept title to the Affordable Housing Site, or to an alternative site acceptable to MOHCD  
7 that equals or exceeds the size needed to build not less than 168 dwelling units and does not  
8 materially increase any costs to MOHCD for development of affordable housing on that  
9 alternative site. The Director of Planning, at the Director's discretion and in consultation with  
10 the City Attorney and the Director of MOHCD, is authorized to enter into any additions,  
11 amendments, or other modifications to the Development Agreement that the Director of  
12 Planning determines are in the best interests of the City and that do not materially increase  
13 the obligations or liabilities of the City or materially decrease the benefits to the City under the  
14 Development Agreement, subject to the approval of any affected City agency as more  
15 particularly described in the Development Agreement.

16 (c) As set forth in the Development Agreement, Developer will not receive any of  
17 the fee waivers described as part of the Approval Modifications unless and until the City  
18 accepts title to the Affordable Housing Site, or to an alternative site acceptable to MOHCD, on  
19 or before the date that the fees would otherwise be due and payable.  
20

21 Section 5. Administrative Code Chapter 56 Waivers.

22 In connection with the Development Agreement, the Board of Supervisors finds that the  
23 requirements of Administrative Code, Chapter 56 have been substantially complied with, and  
24 hereby waives any procedural or other requirements of Chapter 56 if and to the extent that  
25 they have not been complied with.



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Section 6. Ratification of City Officials' Acts.

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

Section 7. Effective and Operative Dates.

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

(b) This ordinance shall become operative on the effective date of the companion rezoning ordinance in Board File No. 221164, which, among other things, modifies the height limit at Assessor's Block No. 0836, Lot No. 013.

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: /s/ CHARLES SULLIVAN  
CHARLES SULLIVAN  
Deputy City Attorney

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## LEGISLATIVE DIGEST

[Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain Administrative Code Waivers]

**Ordinance approving a Development Agreement between the City and County of San Francisco and 98 Franklin Street, LLC, for certain real property at 98 Franklin Street (Assessor's Parcel Block No. 0836, Lot Nos. 008, 009, and 013), consisting of three parcels located in the Van Ness & Market Residential Special Use District on the east side of Franklin Street, between Oak and Market Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.**

### Existing Law

In 2020, the City entitled a project at 98 Franklin Street, for a new 36-story mixed-use building reaching a height of approximately 365 feet, with 345 dwelling units, and restricting 20% of the project's dwelling units as affordable. The project sponsor has applied to the Planning Department for a development agreement that would (1) increase the project's height to 400 feet (excluding rooftop screen/mechanical equipment), (2) increase the number of dwelling units to 385, (3) permit a land dedication to the City of real property at 600 Van Ness Avenue, or other real property acceptable to the Mayor's Office of Housing and Community Development ("MOHCD"), (4) waive all but one million dollars (\$1,000,000) of the applicable affordable housing fees, with the intent that these funds be dedicated to Parcel K in the Market & Octavia Neighborhood Plan, and (5) vest the project approvals for five years following the effective date of the development agreement.

### Amendments to Current Law

This is a contract approval item. There are no amendments to law.

### Background Information

The affordable housing fee waivers in the development agreement will not occur unless or until MOHCD accepts the land dedication at 600 Van Ness Avenue, or an alternative site approved by MOHCD that can support the required number of affordable housing units. The legislation expresses a non-binding intent that the one million dollars paid by the Project Sponsor for affordable housing fees will be dedicated to Parcel K. This ordinance is the companion to another piece of legislation introduced on the same date, regarding changes to the Planning Code consistent with the proposed development agreement.

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