

BOARD of SUPERVISORS



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MEMORANDUM

TO: Rich Hillis, Director, Planning Department
Elaine Forbes, Executive Director, Port Department
Carla Short, Interim Director, Public Works

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

DATE: October 1, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on September 28, 2021:

File No. 211028

Ordinance accepting the irrevocable offer of a 12-kilovolt power line and associated facilities ("12-kV Line") servicing the Seawall Lot 337 and Pier 48 Mixed-Use Project, bounded by 3rd Street and Mission Rock Street, subject to conditions and limitations; dedicating the 12-kV Line to public use; designating the 12-kV Line for public power purposes; accepting the 12-kV Line for maintenance and liability purposes; adopting findings 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; accepting a Public Works Order recommending various actions regarding the 12-kV Line; and authorizing official acts in connection with this Ordinance, as defined herein.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

cc: Corey Teague, Planning Department

Board of Supervisors
Land Use and Transportation Committee
Referral
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Dan Sider, Planning Department
Laura Lynch, Planning Department
Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
Adam Varat, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Planning Department
Boris Delepine, Port Department
David Steinberg, Public Works
Jeremy Spitz, Public Works
John Thomas, Public Works
Lena Liu, Public Works

1 [Acceptance and Public Dedication of 12-Kilovolt Power Facilities - Mission Rock]

2

3 **Ordinance accepting the irrevocable offer of a 12-kilovolt power line and associated**
 4 **facilities (“12-kV Line”) servicing the Seawall Lot 337 and Pier 48 Mixed-Use Project,**
 5 **bounded by 3rd Street and Mission Rock Street, subject to conditions and limitations;**
 6 **dedicating the 12-kV Line to public use; designating the 12-kV Line for public power**
 7 **purposes; accepting the 12-kV Line for maintenance and liability purposes; adopting**
 8 **findings 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; accepting a Public Works Order recommending various actions**
 11 **regarding the 12-kV Line; and authorizing official acts in connection with this**
 12 **Ordinance, as defined herein.**

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

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

21 Section 1. Background and Findings.

22 (a) This ordinance aims to facilitate the phased development of the Seawall Lot 337
 23 and Pier 48 Mixed-Use Project (“Project”), bounded by 3rd Street and Mission Rock Street,
 24 and to provide construction power and public power to serve the Project. On October 5, 2017,
 25 the Planning Commission certified the Final Environmental Impact Report for the Seawall Lot
 337 and Pier 48 Mixed-Use Project (Planning Department Case No. 2013.0208E) (“FEIR”) by

1 adopting Planning Commission Motion No. 20017. The FEIR was prepared pursuant to the
2 California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000 et seq.; hereafter
3 “CEQA”). Pursuant to Planning Commission Motion No. 20018, the Planning Commission
4 adopted findings, as required by CEQA, regarding the alternatives, mitigation measures,
5 significant environmental effects analyzed in the FEIR, a statement of overriding
6 considerations for approval of the Project, and a proposed mitigation monitoring and reporting
7 program. On May 21, 2020, the Planning Department issued a note to file regarding
8 proposed project changes addressed in Public Works Order No. 203636 (“Note to File”).
9 Planning Commission Motion Nos. 20017 and 20018 and the Planning Department’s analysis
10 and determinations in the Note to File are on file with the Clerk of the Board of Supervisors in
11 File No. _____ and are incorporated herein by reference.

12 (b) On January 30, 2018, the Port Commission adopted Resolution No. 18-03
13 approving the Disposition and Development Agreement (“DDA”) by and between the Port of
14 San Francisco (“Port”) and Seawall Lot 337 Associates, LLC (“Master Developer”), concerning
15 the Project.

16 (c) On February 27, 2018, the Board of Supervisors (“Board”) adopted Ordinance No.
17 33-18 approving a Development Agreement for the Project between the City and County of
18 San Francisco (“City”) and Seawall Lot 337 Associates, LLC (“DA”) and adopted the
19 environmental findings set forth in Motion No. 20019, on file with the Clerk of the Board in File
20 No. 171313. Following the Mayor’s signature, Ordinance No. 33-18 became effective on April
21 6, 2018

22 (d) On February 13, 2018, the Board adopted Resolution No. 42-18 authorizing the
23 approval of the DDA. The Mayor signed Resolution No. 42-18 on February 23, 2018.

24 (e) On December 13, 2019, the Public Works Director (together with the Acting
25 Director and Interim Director, the “Director”) issued Public Works Order No. 202368 approving

1 a tentative map covering the Project site (“Tentative Map”) subject to conditions of approval
2 (“Tentative Map Conditions of Approval”).

3 (f) Pursuant to the Assignment and Assumption Agreement between Master Developer
4 and Mission Rock Horizontal Sub (Phase 1), L.L.C. (“Subdivider”), effective as of December
5 18, 2019, Master Developer assigned certain obligations relating to Phase I of the Project to
6 Subdivider.

7 (g) On June 2, 2020, the Board approved the Project’s first phased final map (“Final
8 Map No. 9443”), pursuant to Motion No. M20-060.

9 (h) In March 2021, Public Works conditionally approved Instructional Bulletin (IB) #3
10 (dated March 10, 2021) and IB#3 Revision 1 (dated March 19, 2021) (collectively “IB#3”)
11 proposing amendments to the Mission Rock Phase 1 Improvement Plans Street Improvement
12 Permit No. 20IE-00486 (“Phase 1 SIP”) to conditionally approve the proposed 12-kV Line to
13 provide power for construction and service to buildings within the Project’s first phase.

14 (i) On June 30, 2021, at Subdivider’s request and following a duly-noticed public
15 hearing, the Director issued Public Works Order No. 205068 authorizing exceptions from
16 provisions of the Subdivision Code, the Subdivision Regulations, and Tentative Map
17 Conditions of Approval, including: (1) an exception from Subdivision Code Section 1337(a) to
18 authorize installation of an overhead electric line; (2) an exception to Subdivision Regulations
19 Appendix A, Section VII.D.1, to authorize Subdivider to make an offer of dedication of the 12-
20 kV Line for acceptance by the City prior to the completion of new full, complete, and functional
21 public streets; (3) an exception from Subdivision Regulations, Appendix A, Section VII.D.2 to
22 authorize the public dedication of the 12-kV Line without an irrevocable offer of an easement
23 or a fee interest in the real property corresponding to the 12-kV Line; (4) an exception to
24 Tentative Map Condition of Approval - Public Works - Bureau of Street Use and Mapping -
25 Division of Surveying and Mapping No. 20 to authorize Subdivider to make an offer of

1 dedication of the 12-kV Line subsequent to approval of Final Map No. 9443; (5) an exception
2 to Tentative Map Condition of Approval - SFPUC Wastewater Enterprise No. 9, to authorize
3 issuance of a Notice of Completion, as described in the Tentative Map Conditions of Approval,
4 for temporary infrastructure; and (6) an exception to Tentative Map Condition of Approval -
5 SFPUC Power Enterprise - Hetch Hetchy Power Condition No. 1, accounting for ongoing
6 negotiation of an Electric Service Agreement between Subdivider and SFPUC. A copy of
7 Public Works Order No. 205068 is on file with the Clerk of the Board in File No. _____
8 and incorporated herein by reference.

9 (j) On June 4, 2021, at the request of Subdivider, the San Francisco Public Utilities
10 Commission (“SFPUC”) executed a written determination (“SFPUC Authorization Letter”)
11 approving certain authorizations pursuant to the SFPUC Rules and Regulations Governing
12 Electric Service (“SFPUC Electric Rules”), including (1) authorization under SFPUC Rule
13 XV.7.C.2 confirming that SFPUC would operate and maintain the 12-kV Line although
14 portions of it will not be located within a street or public utility easement; (2) an exception from
15 SFPUC Rule XV.7.C.3 allowing for SFPUC operation and ownership of the 12-kV Line
16 although a portion of the line will be overhead; and (3) an exception from SFPUC Rule XV.I.5
17 confirming that SFPUC would operate and eventually own the 12-kV Line, subject to
18 acceptance by the Board, notwithstanding that the 12-kV Line will be energized before the
19 City accepts such 12-kV Line, and upon acceptance, a portion of the 12-kV Line will be
20 located outside of a public right-of-way or a public utility easement.

21 (k) In Public Works Order No. _____, dated _____, 2021, the City Engineer
22 and the Director made the following certifications and statements: (1) Subdivider has
23 irrevocably offered the 12-kV Line to the City as set forth in the Irrevocable Offer of Dedication
24 of Improvements (12-kV Distribution Line), dated _____, 2021, and recorded on
25 _____ 2021, as Document No. ____ - _____ (“Offer of Improvements”);

1 (2) SFPUC has inspected the 12-kV Line and determined the 12-kV Line has been
2 constructed in accordance with the Plans and Specifications and all City codes, regulations,
3 and standards governing the 12-kV Line, as of _____, 2021; (3) the Port of San
4 Francisco has inspected the 12-kV Line and determined the 12-kV Line has been constructed
5 in accordance with the Plans and Specifications and all City codes, regulations, and standards
6 governing the 12-kV Line, as of _____, 2021; (4) by its letter dated _____, 2021,
7 the SFPUC has determined that it is prepared to take ownership of the 12-kV Line subject to
8 Subdivider's agreement to replace the 12-kV Line with a Permanent Power Line and remove
9 the 12-kV Line at Subdivider's sole cost as provided in Public Works Order No. _____ and the
10 SFPUC Authorization Letter; (5) Public Works has determined the 12-kV Line has been
11 constructed in accordance with the Plans and Specifications and all City codes, regulations,
12 and standards governing the 12-kV Line, as of _____, 2021, subject to the exceptions
13 approved under Public Works Order No. 205068 and the authorizations approved pursuant to
14 the SFPUC Authorization Letter; and (6) the 12-kV Line is ready for its intended use as a non-
15 permanent power line.

16 (l) In Public Works Order No. _____, the Director and City Engineer also
17 recommended that the Board of Supervisors dedicate the 12-kV Line to public use; designate
18 it for public power purposes; and accept it for City maintenance and liability purposes. The
19 Director and City Engineer recommended that acceptance of the 12-kV Line for maintenance
20 and liability purposes be subject to the following conditions: (1) the acceptance shall be
21 expressly contingent upon Subdivider's replacement of the 12-kV Line with the permanent
22 underground electrical line in an underground ductbank in the future Bridgeview Street
23 running north from the terminus of the Bay Corridor Transmission Distribution vault at Mission
24 Rock Street and Terry Francois Boulevard within the Mission Rock project ("Permanent Power
25 Line"), consistent with the Infrastructure Plan and the SFPUC Power Enterprise Rules and

1 Regulations Governing Electric Service, effective May 9, 2017 (“SFPUC Power Rules”), and
2 removal of the 12-kV Line, at Subdivider’s sole cost, no later than the date that is 90 days
3 after the date the SFPUC has determined that the Permanent Power Line has been electrified
4 and all other electrical service facilities to the 12-kV Line have been disconnected from the 12-
5 kV Line and transferred to the Permanent Power Line; (2) Subdivider’s conditional assignment
6 of all warranties and guaranties to the City related to the construction of the 12-kV Line; (3)
7 Subdivider’s compliance with the applicable Public Improvement Agreement, as amended;
8 and (4) Subdivider’s compliance with all conditions and requirements set forth in Street
9 Improvement Permit No. ____-____ and IB#3; and (5) Subdivider’s compliance with the
10 Subdivision Code and the Subdivision Regulations. Copies of Public Works Order
11 No._____, the Offer of Improvements, and the Public Improvement Agreement, as amended,
12 are on file with the Clerk of the Board of Supervisors in File No. _____ and are
13 incorporated herein by reference.

14 (m) The Planning Department, in a letter dated _____ (the “Planning Department
15 Letter”), as part of Planning Department Case No. _____, determined that the
16 acceptance and public dedication of the 12-kV Line by the City is consistent with the General
17 Plan and with the Eight Priority Policies of Planning Code Section 101.1. A copy of the
18 Planning Department letter is on file with the Clerk of the Board of Supervisors in File No.
19 _____ and is incorporated herein by reference.

20 (n) In the Planning Department Letter, the Planning Department also found that the
21 actions contemplated by this ordinance are within the scope of the FEIR and the Note to File
22 and do not trigger the requirement for subsequent environmental review pursuant to CEQA.

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1 Section 2. Adoptions and Approvals.

2 (a) The Board of Supervisors adopts as its own the CEQA findings and the General
3 Plan and Planning Code Section 101.1 consistency findings in the Planning Department
4 Letter, as referenced in Section 1(m)-(n) of this ordinance, in connection with the acceptance
5 and public dedication of the 12-kV Line and other actions specified in this ordinance.

6 (b) The Board of Supervisors further finds that pursuant to the CEQA Guidelines
7 (California Code of Regulations Title 14, Sections 15000 et seq.), including Sections 15162
8 and 15164, the actions contemplated herein are consistent with, and within the scope of, the
9 Project analyzed in the FEIR and the Note to File, and that (1) no substantial changes are
10 proposed in the Project and no substantial changes have occurred with respect to the
11 circumstances under which this Project will be undertaken that would require major revisions
12 to the FEIR due to the involvement of any new significant environmental effects or a
13 substantial increase in the severity of previously identified effects, and (2) no new information
14 of substantial importance that was not known and could not have been known with the
15 exercise of reasonable diligence at the time the FEIR was certified as complete shows that
16 the Project will have any new significant effects not analyzed in the FEIR, or a substantial
17 increase in the severity of any effect previously examined, or that new mitigation measures or
18 alternatives previously found not to be feasible would in fact be feasible and would
19 substantially reduce one or more significant effects of the Project, or that mitigation measures
20 or alternatives which are considerably different from those analyzed in the FEIR would
21 substantially reduce one or more significant effects on the environment.

22 (c) The Board of Supervisors has reviewed and approves Public Works Order No.
23 _____, including the City Engineer and Director’s certification, statements, and
24 recommendations, as referenced in Section 1(k)-(l) of this ordinance, concerning the
25

1 acceptance and public dedication of the 12-kV Line and other actions set forth in the Public
2 Works Order.

3

4 Section 3. Acceptance of Public Infrastructure and Assumption of Maintenance and
5 Liability Responsibilities.

6 (a) Pursuant to California Streets and Highways Code Section 1806 and San
7 Francisco Administrative Code Sections 1.51 et seq., and Public Works Order No. _____,
8 the Board of Supervisors hereby accepts the Offer of Improvements and dedicates the 12-kV
9 Line to public use.

10 (b) The Board of Supervisors hereby designates the 12-kV Line for public power
11 purposes.

12 (c) The Board of Supervisors hereby accepts the 12-kV Line for City maintenance and
13 liability purposes, subject to the conditions listed in subsections (d) and (e), below.

14 (d) The 12-kV Line accepted pursuant to subsections (a)-(c), above, is subject to the
15 following conditions: (1) the acceptance is expressly contingent upon Subdivider's
16 replacement of the 12-kV Line with the Permanent Power Line, consistent with the SFPUC
17 Power Rules and removal of the 12-kV Line, at Subdivider's sole cost, no later than the date
18 that is 90 days after the date the SFPUC has determined that the Permanent Power Line has
19 been electrified and all other electrical service facilities to the 12-kV Line have been
20 disconnected from the 12-kV Line and transferred to the Permanent Power Line; (2)
21 Subdivider's conditional assignment of all warranties and guaranties to the City related to the
22 construction of the 12-kV Line; (3) Subdivider's obligations under the Public Improvement
23 Agreement, as amended; (4) Subdivider's compliance with all conditions and requirements set
24 forth in the Phase 1 SIP and IB#3, including the Subdivider's obligation to hold harmless,
25 defend, and indemnify the City as specified in the Phase 1 SIP and IB#3; and (5) Subdivider's

1 compliance with the Subdivision Code and Subdivision Regulations, including obtaining all
2 required exceptions therefrom.

3 (e) The Board of Supervisors hereby acknowledges Subdivider’s conditional
4 assignment of all warranties and guaranties to the City related to the construction of the 12-kV
5 Line.

6
7 Section 4. Authorization for Implementation. The Mayor, Clerk of the Board of
8 Supervisors, Director of Real Estate, and Director are hereby authorized and directed to take
9 any and all actions which they or the City Attorney may deem necessary or advisable in order
10 to effectuate the purpose and intent of this ordinance, including, but not limited to, the filing of
11 the ordinance in the Official Records of the City and County of San Francisco.

12
13 Section 5. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor’s veto of the ordinance.

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

19 By: /s/ Christopher T. Tom
20 CHRISTOPHER T. TOM
21 Deputy City Attorney

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LEGISLATIVE DIGEST

[Acceptance and Public Dedication of 12-Kilovolt Power Facilities - Mission Rock]

Ordinance accepting the irrevocable offer of a 12-kilovolt power line and associated facilities (“12-kV Line”) servicing the Seawall Lot 337 and Pier 48 Mixed-Use Project, bounded by 3rd Street and Mission Rock Street, subject to conditions and limitations; dedicating the 12-kV Line to public use; designating the 12-kV Line for public power purposes; accepting the 12-kV Line for maintenance and liability purposes; adopting findings 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; accepting a Public Works Order recommending various actions regarding the 12-kV Line; and authorizing official acts in connection with this Ordinance, as defined herein.

Existing Law

On February 27, 2018, the Board of Supervisors (“Board”) adopted Ordinance No. 33-18 approving a Development Agreement for the Seawall Lot 337 and Pier 48 Mixed-Use Project (“Project”), bounded by 3rd Street and Mission Rock Street, between the City and County of San Francisco (“City”) and Seawall Lot 337 Associates, LLC and adopted the environmental findings set forth in Motion No. 20019, on file with the Clerk of the Board in File No. 171313. Following the Mayor’s signature, Ordinance No. 33-18 became effective on April 6, 2018. On February 13, 2018, the Board adopted Resolution No. 42-18 authorizing the approval of the Project’s Disposition and Development Agreement. The Mayor signed Resolution No. 42-18 on February 23, 2018.

Amendments to Current Law

By this ordinance, the City would accept the developer’s offer of dedication of a 12-kilovolt power line and associated facilities (“12-kV Line”) servicing the Project, subject to conditions and limitations; dedicate the 12-kV Line to public use; designate the 12-kV Line for public power purposes; and accept the 12-kV Line for maintenance and liability purposes. This ordinance would make certain findings, including environmental findings and findings that the legislation is consistent with the General Plan, and the priority policy findings of the Planning Code Section 101.1.

Background Information

This ordinance would facilitate the phased development of the Project and provide the Project with construction power and public power. If passed, the ordinance would enable the City to accept the offer of dedication of the 12-kV Line and publicly dedicate the 12-kV Line subject to the following conditions: (1) the acceptance would be expressly contingent upon Subdivider’s

replacement of the 12-kV Line with a permanent underground electrical line in an underground ductbank in the future Bridgeview Street running north from the terminus of the Bay Corridor Transmission Distribution vault at Mission Rock Street and Terry Francois Boulevard within the Mission Rock project ("Permanent Power Line"), consistent with the SFPUC Power Rules and removal of the 12-kV Line, at Subdivider's sole cost, no later than the date that is 90 days after the date the SFPUC has determined that the Permanent Power Line has been electrified and all other electrical service facilities to the 12-kV Line have been disconnected from the 12-kV Line and transferred to the Permanent Power Line; (2) Subdivider's conditional assignment of all warranties and guaranties to the City related to the construction of the 12-kV Line; (3) Subdivider's obligations under the applicable Public Improvement Agreement, as amended; (4) Subdivider's compliance with all conditions and requirements set forth in the applicable street improvement permit and instructional bulletins, including the Subdivider's obligation to hold harmless, defend, and indemnify the City; and (5) developer's compliance with the Subdivision Code and Subdivision Regulations.