

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

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

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

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

Section 1. Background and Findings.

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

(b) Chapter 56 of the Administrative Code sets forth certain procedures for processing and approving development agreements in the City and County of San Francisco (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, 22nd Street on the south, and San Francisco Bay on
4 the north and east commonly known as Pier 70. FC Pier 70, LLC, an affiliate of Forest City
5 Development California, Inc., will act as the master developer for the Project ("Developer").

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

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

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

20 (g) Development of the 28-Acre Site in accordance with the DDA and the
21 Development Agreement will help realize and further the City's goals to restore and revitalize
22 the Union Iron Works Historic District, increase public access to the waterfront, increase
23 public open space and community facilities within the neighborhood, increase affordable and
24 market-rate housing, and create a significant number of construction and permanent jobs
25 along the southeastern waterfront. In addition, the Project will provide additional benefits to

1 the public that could not be obtained through application of existing City ordinances,
2 regulations, and policies.

3 Section 2. Environmental Findings.

4 (a) The Planning Department has determined that the actions contemplated in this
5 ordinance comply with the California Environmental Quality Act (Public Resources Code
6 §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 170930 and
7 incorporated in this ordinance by reference.

8 (b) The Board of Supervisors previously adopted Resolution No. _____, a
9 copy of which is in Board File No. 170987, making CEQA findings for the Project. The Board
10 of Supervisors adopts and incorporates in this ordinance by reference the Planning
11 Commission's findings under CEQA.

12 Section 3. Consistency Findings.

13 The Planning Commission recommended that the Board of Supervisors approve the
14 Development Agreement and amendments to the General Plan, the Planning Code, and the
15 Zoning Maps at a public hearing on August 24, 2017, by Resolution No. 19978, a copy of
16 which is in Board File No. 170930. The Board of Supervisors adopts and incorporates by
17 reference in this ordinance the Planning Commission's findings of consistency with the
18 General Plan, as amended, and the eight priority policies of Planning Code Section 101.1.

19 Section 4. Public Trust Findings.

20 At a public hearing on September 12, 2017, the Port Commission consented to the
21 Development Agreement and approved the trust exchange agreement and the DDA, subject
22 to Board of Supervisors' approval, finding that the Project would be consistent with and further
23 the purposes of the common law public trust and statutory trust under the Burton Act (Stats.
24 1968, ch. 1333) by Resolution No. 17-47, a copy of which is in Board File No. 170863. The
25

1 Board of Supervisors adopts and incorporates in this ordinance by reference the Port
2 Commission's public trust findings.

3 Section 5. Approval of Development Agreement.

4 The Board of Supervisors:

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

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

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

11 (d) approves the Workforce Development Plan attached to the DDA in lieu of
12 requirements under Administrative Code Chapter 14B and Section 56.7(c).

13 Section 6. Administrative Code Chapter 56 Waivers.

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

17 (a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c)
18 (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10
19 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination);
20 Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and
21 Section 56.20 (Fee); and

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

1 Section 7. Other Administrative Code Waivers.

2 The Board of Supervisors waives the application to the Project of these provisions of
3 the Administrative Code: (a) Chapter 6 (Public Works Contracting Policies and Procedures)
4 other than the payment of prevailing wages as required in Chapter 6; (b) Chapter 14B (Local
5 Business Enterprise Utilization and Non-Discrimination in Contracting); (c) Section 23.3
6 (Conveyance and Acquisition of Real Property); (d) Section 23.26 (Year-to-Year and Shorter
7 Leases); (e) Sections 23.30—23.42 (Leases When City Is Landlord); (f) Section 23A.7
8 (Transfer of Jurisdiction Over Surplus Properties to the Mayor’s Office of Housing and
9 Community Development); and (g) Section 61.5 (Unacceptable Non-Maritime Land Uses).

10 Section 8. Planning Code Waivers.

11 The Board of Supervisors:

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

18 (b) finds that the Transportation Plan attached to the Development
19 Agreement includes a Transportation Demand Management Plan (“TDM Plan”) and other
20 provisions that meet the goals of the City’s Transportation Demand Management Program in
21 Planning Code Section 169 and waives the application of Section 169 to the Project on the
22 condition that Developer implements and complies with the TDM Plan for the required
23 compliance period.

1 Section 9. Subdivision Code Waivers.

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

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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