

BOARD of SUPERVISORS



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MEMORANDUM

TO: Kate Hartley, Acting Director, Mayor's Office of Housing and Community Development
John Rahaim, Director, Planning Department
John Updike, Director, Real Estate Division
Jonas Ionin, Director of Commission Affairs, Planning Commission
Elaine Forbes, Executive Director, Port Department
Mohammed Nuru, Director, Public Works

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

DATE: September 19, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Lee on September 12, 2017:

File No. 170983

Ordinance approving the sale of Parcel K North, located at 20th Street and Illinois Street, by the Port Commission; waiving certain provisions of the Administrative 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).

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.

c: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, Mayor's Office of Housing and Community Development
Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department
Daley Dunham, Port Department
Amy Quesada, Port Department
David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
John Thomas, Public Works
Lena Liu, Public Works

1 [Administrative Code Waivers - Public Offering of Port Property - "Parcel K North"]

2
3 **Ordinance approving the sale of Parcel K North, located at 20th Street and Illinois**
4 **Street, by the Port Commission; waiving certain provisions of the Administrative Code;**
5 **and adopting findings under the California Environmental Quality Act, public trust**
6 **findings, and findings of consistency with the General Plan, and the eight priority**
7 **policies of Planning Code Section 101.1(b).**

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

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

16 Section 1. Background.

17 (a) In April 2011, the Port Commission of the City and County of San Francisco (the
18 "Port" or the "Port Commission") selected Forest City Development California, Inc., a
19 California corporation ("Forest City"), through a competitive process to negotiate exclusively
20 for the mixed-use development (the "28-Acre Site Project") of approximately 28 acres (the
21 "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded
22 generally by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on
23 the north and east, and commonly known as Pier 70. FC Pier 70, LLC, an affiliate of Forest
24 City, will act as the master developer for the 28-Acre Site Project ("Developer").

25 (b) The Planning Commission recommended by Resolution No. 19979 on
August 24, 2017, amendments to the Planning Code and related Zoning Map amendments
(the "SUD Amendments") to establish a Pier 70 Mixed-Use Special Use District (the "SUD")

1 comprising the 28-Acre Site, an adjacent 3-acre Port-owned site at 20th Street and Illinois
2 Street known as "Parcel K," and approximately 3 acres of land immediately south of Parcel K
3 bisected by a public right-of-way owned by Pacific Gas and Electric Company ("PG&E"),
4 known as the "Hoedown Yard," which is subject to a City purchase option. A copy of the
5 resolution and proposed SUD Amendments are in Board File No. 170864 and incorporated in
6 this ordinance by reference.

7 (c) At the same meeting, the Planning Commission recommended that this Board
8 approve a Development Agreement with Developer under Chapter 56 of the Administrative
9 Code by Resolution No. 19981, a copy of which is in Board File No. 170864 and incorporated
10 in this ordinance by reference. Among other things, the Development Agreement prohibits
11 market-rate condominium developers in the 28-Acre Site from providing on-site inclusionary
12 units and requires them to pay in-lieu affordable housing fees to the Mayor's Office of Housing
13 and Community Development ("MOHCD") for development of 100% affordable housing in the
14 SUD.

15 (d) The Port Commission has engaged in negotiations with the California State
16 Lands Commission for a trust exchange agreement (the "Exchange Agreement"), as permitted
17 under Assembly Bill 418 (Stats. 2011, ch. 477), that would impress or confirm the common
18 law public trust and the statutory trust under the Burton Act (Stats. 1968, ch. 1333)
19 (collectively, the "public trust") on portions of Pier 70 most useful for public trust purposes and
20 remove the public trust from areas more suitable for development for nontrust uses. The Port
21 Commission approved the Exchange Agreement, subject to this Board's approval, by
22 Resolution No. 17-_____ on September 26, 2017, a copy of which is in Board File
23 No. 170864 and incorporated in this ordinance by reference. If the Port and the State Lands
24 Commission enter into the Exchange Agreement, development parcels at the 28-Acre Site
25 and Parcel K would be free of public trust use restrictions and could be developed for housing.

1 (e) In anticipation of the trust exchange, the Port has initiated discussions with San
2 Francisco Public Works and the County Surveyor to vacate an approximately 12-foot portion
3 of Michigan Street adjacent to Parcel K, merge this land with Parcel K, and subdivide the
4 resulting merged parcel into two new parcels, to be known as "Parcel K North" and "Parcel K
5 South," as shown in Exhibit 1 to this ordinance. Under the Affordable Housing Plan (the
6 "AHP") attached to the Disposition and Development Agreement (the "DDA") that is in Board
7 File No. _____ for Resolution No. _____ for approval of the DDA and
8 other documents and incorporated in this ordinance by reference, the Port will enter into a
9 memorandum of understanding with MOHCD to ground lease for nominal rents Parcel K
10 South and two development parcels in the 28-Acre Site, to be developed as 100% affordable
11 housing. Under the AHP, developers of market-rate residential condominiums in the 28-Acre
12 Site will not be permitted to build on-site inclusionary units, but will be required to pay
13 affordable housing fees established by the Development Agreement to provide a funding
14 source for MOHCD's affordable housing development in the SUD.

15 (f) Under the SUD Amendments, Parcel K North could be developed for residential
16 use, supporting 239 or more market-rate condominium units and approximately 6,600 square
17 feet of ground floor retail/arts/light industrial space. The DDA provides for the Port to publicly
18 offer Parcel K North for sale at or above its fair market value as established by a proprietary
19 appraisal.

20 (g) Subject to this Board's approval, the Port intends to offer the site for sale for
21 market-rate condominium development at a minimum bid of its appraised fair market value
22 with the assistance of a broker selected from the approved pool maintained by the City's Real
23 Estate Division, for development as a market-rate residential condominium project and use
24 the sales proceeds to pay for entitlement costs associated with the 28-Acre Project. The
25 successful bidder would be required to enter into a vertical disposition and development

1 agreement with the Port substantially in the form on file in Board File No. _____ for this
2 ordinance and incorporated in this ordinance by reference. Among other things, this
3 agreement would require the developer to:

4 (i) close escrow within 12 months after this Board approves the sale
5 or three months after the developer's selection as the highest qualified bidder,
6 whichever is earlier;

7 (ii) begin construction within 24 months after close of escrow;

8 (iii) comply with all applicable mitigation measures of the Mitigation
9 Monitoring and Reporting Program (the "MMRP"), including Mitigation
10 Measure M-AQ-1f, the Transportation Demand Management Plan;

11 (iv) comply with applicable land use restrictions, impact fees, and
12 exactions imposed by the SUD Amendments, including a requirement to pay
13 in-lieu affordable housing fees equal to 28% of the costs of on-site market-rate
14 condominium units;

15 (v) require each condominium purchaser after the initial occupant to
16 pay the Port a transfer fee of 1.5% of the net purchase price;

17 (vi) comply with measures applicable to development parcels in the
18 SUD abutting Illinois Street substantially in the form attached to the DDA, a copy
19 of which is in Board File No. _____ for Resolution No. _____ for
20 approval of the DDA and other documents and incorporated in this ordinance by
21 reference, which are intended to minimize potential conflicts between American
22 Industrial Center activities and future residential uses at the site;

23 (vii) as a public benefit, build a public plaza described in the Design for
24 Development approved by the Planning and Port Commissions;

1 (viii) build a segment of Michigan Street, subject to reimbursement from
2 public financing sources;

3 (ix) provide a limited amount of ground floor space at no charge to the
4 San Francisco Public Utilities Commission for electrical equipment serving the
5 SUD;

6 (x) if not previously formed, vote in favor of a community facilities
7 district and covenant to pay special taxes when due;

8 (xi) comply with the First Source Hiring Program under Chapter 83 of
9 the Administrative Code;

10 (xii) comply with the Local Hiring Policy for Construction under
11 Section 6.22 of the Administrative Code; and

12 (xiii) comply with certain Local Business Enterprise ("LBE")
13 Subcontracting Participation Requirements to achieve participation by firms that
14 have been certified as LBEs as set forth in Administrative Code Chapter 14B.

15 Section 2. Environmental Findings.

16 (a) At its hearing on August 24, 2017, before recommending the proposed Planning
17 Code amendments for approval, the Planning Commission:

18 (i) certified a Final Environmental Impact Report (the "FEIR") for the
19 Pier 70 Mixed-Use District Project (the "SUD Project") pursuant to the California
20 Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code §§ 21000 et seq.),
21 the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.), and Chapter 31 of
22 the Administrative Code by Motion No. 19976; and

23 (ii) adopted findings under CEQA with respect to the SUD Project,
24 rejected the alternatives to the SUD Project as infeasible, adopted a Statement
25 of Overriding Considerations relating to approvals for the SUD Project based on

1 substantial evidence in the Planning Commission record for the CEQA
2 proceedings (collectively, "CEQA Findings"), and adopted the MMRP by Motion
3 No. 19977.

4 This Board has also reviewed the CEQA Findings and adopts these findings as its own.
5 Copies of both Planning Commission motions are in in Board File No. 170864 and
6 incorporated in this ordinance by reference.

7 (b) With respect to the actions to be taken by this ordinance, this Board has
8 reviewed the FEIR and concurs with its conclusions, affirms the Planning Commission's
9 certification of the FEIR, and finds that the approvals before this Board are within the scope of
10 the FEIR and that no substantial changes in the SUD Project or the circumstances
11 surrounding the SUD Project have occurred and no new information that could not have been
12 known previously showing new significant impacts or an increase in the severity of impacts
13 has been discovered since the Planning Commission certified the FEIR. This Board further
14 finds that, to the extent that the Port's public offering of Parcel K North requires the Port to
15 execute and deliver a vertical disposition and development agreement that would be subject
16 to this Board's approval under Charter Section 9.118, the Port Commission and its Executive
17 Director, as they deem necessary or appropriate in consultation with the City Attorney, are
18 hereby authorized to enter into the vertical disposition and development agreement
19 substantially in the form in Board File No. _____ for this ordinance, and the actions
20 contemplated in this ordinance are within the scope of the SUD Project described and
21 analyzed in the FEIR.

22 Section 3. Consistency Findings.

23 At its hearing on August 24, 2017, the Planning Commission, by Resolution No. 19978,
24 found that the proposed General Plan amendments, the SUD Project, and the related
25 approvals would promote the public welfare, convenience, and necessity, adopted findings

1 that the actions contemplated in this ordinance are consistent, on balance, with the City's
2 General Plan and the eight priority policies of Planning Code Section 101.1(b), and
3 recommended that this Board approve amendments to the General Plan for the SUD Project.
4 The Board adopts these findings as its own. A copy of the Planning Commission resolution is
5 in File No. 170864 and incorporated in this ordinance by reference.

6 Section 4. Approval of Sale.

7 This Board approves the Port's public offering of Parcel K North to the highest qualified
8 bidder at a price no less than fair market value according to the procedures described above
9 and substantially on the terms and conditions in the form of vertical disposition and
10 development agreement in Board File No. _____ for this ordinance, subject to
11 approval by the State Lands Commission of the Exchange Agreement and completion of the
12 public trust exchange.

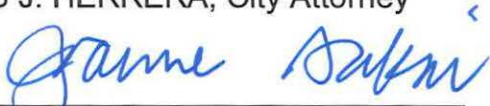
13 Section 5. Administrative Code Waivers.

14 The Board of Supervisors waives the application to the development of Parcel K North
15 of the following provisions of the Administrative Code: (a) the Appraisal Review as defined in
16 and required by Section 23.3 (Conveyance and Acquisition of Real Property);
17 (b) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of
18 Housing and Community Development); and (c) Section 61.5(c)(2) (Unacceptable Non-
19 Maritime Land Uses Added through Waterfront Plan Process).

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Section 6. Effective Date. 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 after receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By: 

JOANNE SAKAI
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code Waivers - Public Offering of Port Property – “Parcel K North”]

Ordinance approving the sale of Parcel K North, located at 20th Street and Illinois Street, by the Port Commission; waiving certain provisions of the Administrative 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).

Existing Law

Several provisions of the Administrative Code govern the sale or lease of City property.

Amendments to Current Law

The ordinance would not amend the Administrative Code.

Background Information

The Port of San Francisco owns and leases property for interim commercial uses at the site, about 31 acres bounded by Illinois Street on the west, 22nd Street on the south, and San Francisco Bay on the north and east. Pacific Gas and Electric Company (PG&E”) owns an approximately 3-acre parcel at the southwestern corner of the Port’s land. In connection with a proposed project on 28 acres of the Port land, known as the “28-Acre Site,” the Planning Commission certified and approved a final environmental impact report on potential development of the Port and PG&E land in accordance with a Pier 70 Special Use District created by companion legislation.

The Port proposes to sell a portion of the 31 acres, located at 20th Street and Illinois Street, for development as residential condominiums and to use its sales proceeds to pay entitlement costs incurred by the developer of the 28-Acre Site. Approval of the ordinance would waive the application to Parcel K North of specified provisions of the Administrative Code.

By separate legislation, the Board is considering a number of other actions to enable anticipated development, including the establishment of financing districts, amendments to the City’s General Plan, Planning Code, and Zoning Map, and a public trust exchange agreement.

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