

BOARD of SUPERVISORS



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MEMORANDUM

Date: September 18, 2024
To: Planning Department/Planning Commission
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 240872
Planning Code, Zoning Map - 30 Van Ness Avenue Special Use District; Amendment of Agreement for Sale of Real Estate

- 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*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at john.carroll@sfgov.org.

1 [Planning Code, Zoning Map - 30 Van Ness Avenue Special Use District; Amendment of
2 Agreement for Sale of Real Estate]

3 **Ordinance amending the Planning Code and Zoning Map to create the 30 Van Ness**
4 **Avenue Special Use District, in the area generally bound by Fell Street to the north,**
5 **Market Street to the east and south, and Van Ness Avenue to the west; modifying the**
6 **Notice of Special Restrictions related to inclusionary housing obligations under the**
7 **Agreement for Sale of Real Estate between the City and 30 Van Ness Development LLC;**
8 **affirming the Planning Department’s determination under the California Environmental**
9 **Quality Act; making findings of consistency with the General Plan, and the eight**
10 **priority policies of Planning Code, Section 101.1; and making public necessity,**
11 **convenience, and welfare findings 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. Environmental and Land Use Findings.

21 (a) On May 21, 2020, the Planning Commission, in Motion No. 20707, certified the
22 Final Environmental Impact Report for the Hub Plan, 30 Van Ness Avenue Project, 98
23 Franklin Street Project, and Hub Housing Sustainability District (“FEIR”) and related actions as
24 in compliance with the California Environmental Quality Act (“CEQA”) (California Public
25 Resources Code Sections 21000 et seq.).

1 (b) On May 21, 2020, the Planning Commission conducted a duly noticed public
2 hearing and, by Resolution No. 20708, adopted findings pursuant to CEQA, including a
3 mitigation monitoring and reporting program, for the Hub Plan, 30 Van Ness Avenue
4 Project, 98 Franklin Street Project, and Hub Housing Sustainability District and related
5 actions. In Ordinance No. 124-20, the Board of Supervisors adopted the Planning
6 Commission’s environmental findings as its own. In accordance with the actions contemplated
7 in this ordinance, this Board relies on the environmental findings in Resolution No. 20708 and
8 concurs with the Planning Department’s determination that no further environmental review is
9 required. Copies of Planning Commission Motion No. 20707 and Resolution No. 20708 and
10 Ordinance No. 124-20 are on file with the Clerk of the Board of Supervisors in File No. 200556
11 and are incorporated herein by reference.

12 (c) On _____, the Planning Commission, in Resolution No. _____,
13 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
14 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The
15 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
16 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

17 (d) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
18 amendments will serve the public necessity, convenience, and welfare for the reasons set
19 forth in Planning Commission Resolution No. _____, and the Board adopts such
20 reasons as its own. A copy of said resolution is on file with the Clerk of the Board of
21 Supervisors in File No. _____ and is incorporated herein by reference.

22
23
24 Section 2. Background and General Findings.
25

1 (a) On February 21, 2017, the City and County of San Francisco (“City”) and
2 Lendlease Development, Inc. entered into an Agreement for Sale of Real Estate (the
3 purchase and sale agreement, or “PSA”) pursuant to which the City agreed to sell to 30 Van
4 Ness Development LLC (“Developer”) the parcel of real property at 30 Van Ness Avenue
5 (Assessor’s Block 0835, Lot 004) (the “Property”). The Board of Supervisors (the “Board” or
6 “Board of Supervisors”) authorized the City’s execution of the PSA in Resolution No. 95-17.

7 (b) Lendlease Development, Inc. assigned its interest in the PSA Developer
8 pursuant to an Assignment and Assumption Agreement dated May 5, 2017.

9 (c) Concurrently with the closing of the transaction contemplated under the PSA,
10 the City conveyed the Property to Developer pursuant to a Grant Deed (Assessor’s Parcel No.
11 Block 0835 Lot 004) dated May 5, 2017 and recorded in the Official Records of the City as
12 Document No. 2017-K447786-00.

13 (d) The Notice of Special Restrictions (“NSR”) attached to the PSA as Exhibit I and
14 recorded against title on the Property as Document No. 2017-K447786-00 in the Official
15 Records of the City requires Developer to satisfy certain inclusionary housing requirements if
16 the Property is developed with 25 or more residential units. Specifically, if the Property is
17 developed with 25 or more residential units, then Developer must satisfy the inclusionary
18 housing requirements of Planning Code Section 415 et seq. by providing either
19 (1) inclusionary on-site units in an amount not less than 25% of all residential units
20 constructed on the Property, or (2) inclusionary off-site units in an amount not less than 33%
21 of all residential units constructed on the Property.

22 (e) Section 6 of the NSR provides that if Developer does not comply with the
23 restrictions set forth in the NSR, it shall constitute a violation of the Planning Code. However,
24 Section 6 further provides that, in the event that the applicable zoning standards (i.e.,
25 Section 415 et seq.) are “modified so as to be less restrictive and the uses therein restricted

1 are thereby permitted and in conformity with the provisions of the Planning Code,” then the
2 NSR would no longer be in effect and would be null and void.

3 (f) On October 17, 2018, in connection with its proposed development project on
4 the Property, Developer submitted applications with the Planning Department for a Downtown
5 Project Authorization, Conditional Use Authorization, Office Allocation, Shadow Analysis, and
6 Transportation Demand Management.

7 (g) On May 21, 2020, the Planning Commission adopted Motion
8 Nos. 20714, 20717, 20718, and 20719, approving the entitlements for the Original Project and
9 authorizing Developer to construct a new 47-story mixed-use building reaching a roof height
10 of up to 520 feet (540 feet inclusive of rooftop screening/mechanical equipment) (the “Original
11 Project”). The Original Project includes a gross floor area of approximately 720,000 square
12 feet, with approximately 468,000 gross square feet of residential uses (333 dwelling units)
13 within a tower situated atop a 9-story podium containing approximately 21,000 gross square
14 feet of retail uses, 300 Class 1 and 72 Class 2 bicycle parking spaces, and three below-grade
15 levels that would accommodate up to 146 vehicle parking spaces and 5 car share spaces. In
16 accordance with the requirements of the NSR, 25% of the units in the Original Project were to
17 be provided as on-site inclusionary units in satisfaction of Planning Code Section 415 et seq.

18 (h) Developer commenced construction of the Original Project on July 18, 2022 and
19 paid all development impact fees in connection therewith on March 14, 2023, which impact
20 fees totaled \$41,000,577.28. After diligently pursuing construction of the Original Project for
21 16 months, Developer halted construction due to feasibility concerns.

22 (i) The Developer and City have worked over the last year to identify modifications
23 that will improve financial feasibility and expedite delivery of the Original Project. Factors such
24 as increases in construction and labor costs, rising interest rates, and a slowing of the real
25 estate market have caused the Original Project to halt construction. However, advancing the

1 Project is critical to meeting the City’s housing production goals and to contribute to the City’s
2 economic recovery by generating jobs and growth in tax revenue.

3 (j) San Francisco is facing a shortage of all types of housing. To meet San
4 Francisco's share of the regional need for housing between 2023-2031, the City must
5 accommodate over 82,000 units, including 46,598 units for extremely low-, very low-, low- and
6 moderate-income households. The Inclusionary Housing Program, Planning Code
7 Section 415 et seq., is an important part of the City's overall strategy for providing affordable
8 housing to very low-, low-, moderate-, and middle-income households, and has created more
9 than 3,300 units since its inception. But the success of the Inclusionary Housing Program is
10 contingent on the overall feasibility of residential development. For that reason, Planning
11 Code Section 415.10 requires periodic review of the program's requirements.

12 (k) From October 2022 through April 2023, the Controller and the Affordable
13 Housing Technical Advisory Committee (“TAC”) reviewed the feasibility of the City’s
14 inclusionary affordable housing obligations and found that none of the development
15 prototypes studied were financially feasible at the inclusionary housing rates in the Planning
16 Code. The findings suggested that residential development was, broadly speaking, not
17 financially feasible under current economic conditions at then-current inclusionary housing
18 rates.

19 (l) On October 2, 2023, after Developer’s payment of development impact fees for
20 the Original Project, the Board of Supervisors adopted Ordinance No. 201-23, which amended
21 the Planning Code by lowering the inclusionary housing requirements under Section 415 et
22 seq. to require “pipeline” projects in the same Planning Code use district as the Property to
23 provide 12% of their units as affordable. The ordinance also reduced most impact fees
24 by 33% with the purpose of improving the financial feasibility of both market rate and
25 affordable housing (the “TAC Legislation”). The TAC Legislation also allows project sponsors

1 to delay payment of impact fees until after project construction, rather than at issuance of the
2 first construction document.

3 (m) The TAC Legislation allows “pipeline” projects to qualify for its reductions in
4 impact fee rates and inclusionary housing requirements only if the subject project received a
5 “first construction document” (for the Original Project, the first addendum to its site permit)
6 after November 1, 2023. The Original Project did not benefit from the TAC Legislation’s
7 reduction of impact fee rates because Developer obtained its first construction document
8 before November 1, 2023.

9 (n) Developer paid impact fees prior to the 33% fee reduction and fee payment
10 deferral, and began to construct the Project as part of its effort to advance an important new
11 development in the Market and Octavia Area Plan. The Developer is not able to take
12 advantage of the reductions afforded by the citywide TAC Legislation and has now halted
13 construction of the Project.

14 (o) Developer seeks to modify the Original Project (as modified, the “Project”) to
15 improve its financial feasibility. Developer proposes to reallocate 18,805 square feet of
16 approved retail space to office space, which increase will require Developer to obtain a “large
17 cap” office allocation for the project under Planning Code Section 322. To improve feasibility
18 of the Project and in consideration of the impact fees already paid, Developer requests that
19 the City (1) waive the requirements of Planning Code Section 415 et seq. for the Project
20 through the creation of a new Special Use District applicable to the Property, and (2) modify
21 the requirements of the NSR.

22
23 Section 3. Article 2 of the Planning Code is hereby amended by adding Section 249.99,
24 to read as follows:

1 **SEC. 249.99. 30 VAN NESS AVENUE SPECIAL USE DISTRICT.**

2 (a) Purpose. In order to facilitate the development of a residential mixed-use project generally
3 consistent with the policies of the Market and Octavia Area Plan, there shall be the 30 Van Ness
4 Avenue Special Use District, consisting of Assessor's Parcel Block No. 0835, Lot No. 004. The
5 boundaries of the 30 Van Ness Avenue Special Use District are designated on Sectional Map No. SU07
6 of the Zoning Map. The 30 Van Ness Avenue Special Use District is subject to Planning Code Section
7 405, which requires the refund of development fees in situations where a site permit is abandoned,
8 expires, is withdrawn, or is cancelled, such that it will be necessary to obtain a new permit to carry out
9 any new work on the development project.

10 (b) Applicability. The provisions of this Special Use District shall only apply to a project that
11 meets the following requirements:

12 (1) a site permit or First Construction Document has been issued for the project, and
13 work thereunder has commenced, prior to August 1, 2024;

14 (2) the site permit or First Construction Document in subsection (b)(1) has not been
15 affirmatively abandoned with an intent not to resume work thereunder; has not expired; has not been
16 canceled; and/or has not been withdrawn; and

17 (3) the project is consistent with the applicable provisions of the Planning Code in effect
18 as of August 1, 2024, inclusive of any variance, modifications, or exceptions granted under the
19 Planning Code, including without limitation, any modifications to a project pursuant to Section 206.6.

20 (c) Controls. Applicable provisions of the Planning Code shall apply to the 30 Van Ness
21 Avenue Special Use District except as otherwise provided in this Section 249.99. In the event of a
22 conflict between other provisions of the Planning Code and this Section, this Section shall control.

23 (d) Inclusionary Housing Requirements. The provisions of Section 415 et seq. as amended or
24 replaced from time to time, shall not apply to projects in the 30 Van Ness Avenue Special Use District.
25 Notwithstanding the preceding sentence, any on-site affordable units provided in the project under any

1 other state or local program, including those programs set forth in Section 206 et seq., shall comply
2 with applicable program requirements, including but not limited to, the requirement to enter a
3 Regulatory Agreement with the City pursuant to Section 206.6(f), as amended from time to time, and
4 any other adopted policies or procedures generally applicable to on-site affordable units, including the
5 Procedures Manual.

6 (e) **Accessory Parking.** The provisions of Section 249.33(b)(10) shall apply to projects in the
7 30 Van Ness Avenue Special Use District regardless of whether any such project provides 25% or more
8 on-site affordable housing units as defined in Section 415.

9 (f) **Refund of Development Impact Fees.** The City shall refund development impact fees under
10 Section 405 if the site permit or First Construction Document in subsection (b)(1) has been
11 affirmatively abandoned with an intent not to resume work thereunder; has expired; has been canceled;
12 and/or has been withdrawn. Any fees to be refunded under Section 405 shall be refunded to the project
13 sponsor within 180 days of the request.

14 (g) **Sunset Provision.** This Planning Code Section 249.99, shall expire by operation of law at
15 the earlier of (1) the City's refund of development impact fees under Section 405; (2) upon issuance of
16 a Temporary Certificate of Occupancy; or (3) upon issuance of a Certificate of Final Completion by
17 the Department of Building Inspection for the project in subsection (b)(1). Upon expiration of this
18 Section 249.99, the City Attorney is authorized to cause its provisions to be removed from the Planning
19 Code and the Zoning Map.

20
21 Section 4. Zoning Map. The Planning Code is hereby amended by revising Special
22 Use District Map SU01 of the Zoning Map of the City and County of San Francisco, as follows:
23

Description of Property	Special Use District Hereby Approved
Assessor's Parcel Block 0835, Lot 004	30 Van Ness Avenue Special Use District

1 Section 5. Modification of NSR. Given (i) the need to improve the Project's feasibility so
2 as to generate more housing in the Market and Octavia Area Plan, (ii) Developer's payment of
3 over \$40,000,000 in impact fees for the Original Project, and (iii) that Section 6 of the NSR
4 authorizes termination or modification of the requirements therein in light of the TAC
5 Legislation, the Board of Supervisors approves Developer's request to modify the NSR to
6 waive the inclusionary housing obligations of the NSR if the project meets the requirements
7 set forth in Planning Code Section 249.99. The modified NSR shall be substantially in
8 conformance with the Modified NSR in Board File No. 240872. The Modified NSR shall
9 become effective immediately upon the effective date of this ordinance.

10
11 Section 6. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance.

15
16 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the "Note" that appears under
21 the official title of the ordinance.

22
23 Section 8. Sunset Provision. As stated in Planning Code Section 249.99, enacted in
24 Section 3 of this ordinance, the 30 Van Ness Avenue Special Use District, and the
25 corresponding Zoning Map amendments in Section 4 of this ordinance, shall expire by

1 operation of law at the earlier of either (a) the City's refund of development impact fees for the
2 site permit or First Construction Document in Section 249.99(b)(1) pursuant to Planning Code
3 Section 405; (b) upon issuance by the Department of Building Inspection of a Temporary
4 Certificate of Occupancy for the project in Planning Code Section 249.(b)(1); or (c) upon
5 issuance by the Department of Building Inspection of a Certificate of Final Completion for the
6 project in Planning Code Section 249.99(b)(1). Upon expiration of this ordinance, the City
7 Attorney is authorized to cause Planning Code Section 249.99 to be removed from the
8 Planning Code and the Special Use District from the Zoning Maps.

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11 APPROVED AS TO FORM:
12 DAVID CHIU, City Attorney

13 By: /s/ Audrey Pearson
14 AUDREY W. PEARSON
15 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code, Zoning Map - 30 Van Ness Avenue Special Use District; Amendment of Agreement for Sale of Real Estate]

Ordinance amending the Planning Code and Zoning Map to create the 30 Van Ness Avenue Special Use District, in the area generally bound by Fell Street to the north, Market Street to the east and south, and Van Ness Avenue to the west; modifying the Notice of Special Restrictions related to inclusionary housing obligations under the Agreement for Sale of Real Estate between the City and 30 Van Ness Development LLC; affirming the Planning Department’s determination 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; and making public necessity, convenience, and welfare findings under Planning Code, Section 302.

Existing Law

Planning Code Section 415 et seq, the Inclusionary Housing Ordinance, requires projects to pay a development impact fee, which is used by the Mayor’s Office of Housing and Community Development to construct affordable housing projects in San Francisco. Housing developers may also elect to provide affordable units within the project (on-site units), or provide off-site affordable units. The amount of the fee, or the number of required on-site or off-site units varies depending on, among other factors, when the project was proposed, when it is approved, and where the project is located.

Planning Code Section 249.33(b)(10), the accessory parking provisions of the Van Ness & Market Residential Special Use District, allows projects that provide more than 25% on-site affordable units to jointly use accessory residential parking and accessory non-residential parking in certain circumstances.

Planning Code section 405 allows a project sponsor to seek a refund of development impact fees if a building or site permit is canceled or withdrawn, or if the permit expires prior to completion of work and commencement of occupancy, such that it will be necessary to obtain a new permit to carry out any work.

In February 2017, the Board of Supervisors authorized a Purchase and Sale Agreement of the property at 30 Van Ness Avenue, which included a requirement that the purchaser provide 25% of residential units as on-site inclusionary units, or pay a fee equivalent to a 33% on-site requirement. The inclusionary requirement was memorialized in a Notice of Special Restrictions on the property.

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Amendments to Current Law

This ordinance would amend the Planning Code to create a special use district for 30 Van Ness Avenue. Projects in the special use district (“SUD”) must have had a building permit or site permit prior to August 1, 2024. Such projects would need to comply with the Planning Code except as stated in the SUD. In particular, eligible projects would not be subject to the requirements of Section 415, the Inclusionary Affordable Housing Program; and accessory non-residential parking could be used jointly with accessory residential parking even if a project did not provide 25% on-site affordable units.

The SUD would expire by operation of law at the earlier of the City providing a refund of development impact fees, issuance of a Temporary Certificate of Occupancy, or issuance of a Certificate of Final Completion.

The ordinance would modify the Notice of Special Restrictions on 30 Van Ness Avenue to remove the 25% on-site/33% fee affordable housing requirement.

Background Information

In May 2020, the City approved a mixed-use residential and office project at 30 Van Ness Avenue, with 333 dwelling units, 25% of which would be affordable units (consistent with the NSR on the property noted above). The project sponsor later obtained a site permit, paid over \$41 million in development impact fees, and began construction. The developer halted construction in approximately November 2023, due to feasibility concerns.

Based on recommendations from the Controller and the Affordable Technical Advisory Committee, in October 2023, the City reduced the inclusionary housing requirements for certain projects, and reduced most development impact fees by 33%. Because the project at 30 Van Ness Avenue had already started construction, it was not eligible for the inclusionary housing or fee reductions.

This special use district is designed to improve the financial feasibility of development at 30 Van Ness Avenue. Projects with a site permit issued prior to August 2024 (i.e. the current project, or a modification of the current project that is consistent with the Planning Code) would not have to comply with the Inclusionary Housing Program, but also would not be eligible for a refund of development impact fees. The SUD expires if the current project is issued a refund of development impact fees, or after construction, whichever occurs first. Therefore, a new project would be subject to the applicable requirements of the Inclusionary Housing Program. In either case, the requirement in the NSR on 30 Van Ness Avenue to provide 25% on-site units or pay a 33% fee, would be removed.

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