

1 [Master Encroachment Permit - Pier 70]

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3 **Resolution granting revocable permission to the Port of San Francisco to maintain**
4 **encroachments in the public right-of-way, including but not limited to custom paving**
5 **materials, bicycle racks, and a historic building frame structure; delegating authority to**
6 **the Public Works Director, in consultation with the Port of San Francisco, to assign**
7 **responsibility for sidewalk maintenance and liability to various entities; granting**
8 **revocable permission to FC Pier 70, LLC to maintain an excess conduit in the public**
9 **right-of-way within the Pier 70 Project, Phase 1; adopting environmental findings under**
10 **the California Environmental Quality Act; making findings of consistency with the**
11 **General Plan, and the eight priority policies of Planning Code, Section 101.1; and to**
12 **authorize the Director of Public Works to enter into amendments or modifications to**
13 **the Permit and associated Agreements that do not materially increase the obligations**
14 **or liabilities to the City and are necessary to effectuate the purposes of the Permit and**
15 **associated Agreements or this Resolution.**

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17 WHEREAS, This Resolution addresses the Board of Supervisors approval for certain
18 improvements in the public right-of-way within the Pier 70 Project site to be maintained by the
19 City and County of San Francisco acting by and through its Port Commission ("Port") and by
20 FC PIER 70, LLC, a Delaware limited liability company ("FC Pier 70"), the master developer of
21 this Pier 70 Project; and

22 WHEREAS, The Pier 70 Project, at this 28-acre site, is generally bounded by the
23 northern edge of 20th Street, San Francisco Bay to the east, the southern edge of 22nd
24 Street, and the eastern edge of Illinois Street; and includes improvements at the intersections
25 of Illinois Street and both 20th and 22nd Streets ("Project"); and

1 WHEREAS, The improvements included within Phase 1 of the Project are located
2 within portions of 20th, 21st, 22nd, Illinois, Louisiana, and Maryland Streets (the “Phase 1
3 Streets”), as more specifically shown in the maps and diagrams on file with the Clerk of the
4 Board of Supervisors in File No. 240203; and

5 WHEREAS, This Resolution addresses approval of a Master Encroachment Permit
6 with two components, each with an associated encroachment agreement (collectively, the
7 “Permit”) as described below:

8 (1) Encroachment Agreement for Port to maintain improvements in the public
9 right-of-way for the entire Project site, including improvements constructed for Phase 1 of the
10 Project, and providing for potential Port assignment of sidewalk maintenance responsibility to
11 another entity or entities; and

12 (2) Major Encroachment Permit for FC Pier 70 to maintain an excess
13 telecommunications conduit in the joint trench in the Phase 1 Streets; and

14 WHEREAS, California Statutes of 1968, Chapter 1333 (“Burton Act”) and San
15 Francisco Charter, Section 4.114 and Appendix B empower the San Francisco Port
16 Commission to use, conduct, operate, maintain, manage, regulate, and control the lands
17 within Port Commission jurisdiction subject to the public trust; and

18 WHEREAS, This Project is subject to that certain Disposition and Development
19 Agreement between the Port and FC Pier 70, recorded in the Official Records of the City and
20 County of San Francisco on May 25, 2018, as Document No. 2018-K619435 and approved by
21 the Board of Supervisors through the passage of Resolution 401-17, (the “DDA”) and that
22 certain Development Agreement between the City and County of San Francisco (“City”) and
23 FC Pier 70, recorded in the Official Records of the City and County of San Francisco on
24 May 25, 2018, as Document No. 2018-K619432 and which the Board of Supervisors
25 approved through Ordinance No. 224-17 (“Development Agreement”); and

1 WHEREAS, The Development Agreement and DDA provide for FC Pier 70 to construct
2 street, utility, and other infrastructure that would be accepted by the City as public right-of-
3 ways and public infrastructure, pending Board of Supervisors acceptance, which is being
4 considered in companion legislation on file with the Clerk of the Board of Supervisors in File
5 No. 240087; and

6 WHEREAS, The Development Agreement and DDA also provide for FC Pier 70 to
7 construct improvements in the public right-of-way that will not be accepted by the City and
8 instead will be maintained as encroachments by Port or FC Pier 70; and

9 WHEREAS, The Project-wide improvements that the Port will maintain as
10 encroachments include: street and sidewalk paving materials; one historic “Building 15” frame
11 structure (Phase 1 only); custom bollards, bicycle racks, street furniture, and trash cans;
12 wayfinding and interpretive signs; sidewalk landscaping and irrigation; retaining walls; and
13 other improvements as specified in the DDA and other Development Agreement documents
14 (“Port Encroachments”); and

15 WHEREAS, The improvements constructed for Phase 1 of the Project in accordance
16 with Final Subdivision Map No. 9585, its Public Improvement Agreement (Pier 70 28-Acre Site
17 Project) dated September 15, 2020, and the Infrastructure Plan and Specifications shown in
18 Street Improvement Permit No. 19 IE-00245 as-built drawings (“Phase 1 SIP”) include the
19 Project-wide improvements mentioned above including the frame of Building 15, and other
20 improvements as specified in the Phase 1 SIP (“Port Phase 1 Encroachments”); and

21 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., the Port requested
22 permission to maintain the Port Encroachments, including the Port Phase 1 Encroachments,
23 in the public right-of-way for the life of a master encroachment permit to be issued pursuant to
24 Public Works Code, Sections 786 et seq., which permit is to be memorialized by an
25 Interdepartmental Master Encroachment Permit and Maintenance Agreement between Public

1 Works and the Port (“Port IMEP”), a draft of which is on file with the Clerk of the Board of
2 Supervisors in File No. 240203; and

3 WHEREAS, Phase 1 Streets will include wayfinding and interpretive signs at a later
4 time and will be annexed into the Port IMEP; and

5 WHEREAS, The Project improvements also include sidewalks on each of the streets
6 within the Project; and

7 WHEREAS, Pursuant to Public Works Code, Section 706, sidewalk maintenance is
8 generally the responsibility of the fronting property owner; and

9 WHEREAS, An amendment to Public Works Code, Section 706 et seq. is being
10 considered in companion legislation on file with the Clerk of the Board of Supervisors in File
11 No. 240087, which amendment would establish that a long-term lessee of Pier 70 Project
12 property is responsible for the sidewalk maintenance and liability otherwise held by the Port
13 as property owner with respect to the property subject to the long-term lease; and

14 WHEREAS, Pursuant to Public Works Code, Section 786(b), a Master Encroachment
15 Permit authorizes the shifting of the responsibility for sidewalk maintenance and liability from
16 the fronting property owners to the Permittee, or the Permittee’s agent or assignee, such as a
17 homeowners’ association (“HOA”), subject to Board of Supervisors approval; and

18 WHEREAS, Pursuant to Public Works Code, Section 786(b), Port requested
19 permission to allow for the assignment of such responsibility to FC Pier 70, an HOA, or other
20 entity in the future; and

21 WHEREAS, The Port IMEP will include a provision that would allow the Public Works
22 Director, in consultation with the Port, to assign or approve the assignment of sidewalk
23 responsibility and liability to FC Pier 70, an HOA, or other entity in the future; and

24 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., FC Pier 70
25 requested permission from Public Works to temporarily maintain an excess utility conduit in

1 the public right-of-way in the form of an individual Major Encroachment Permit as a part of this
2 Master Encroachment Permit (“Conduit MEP”); and

3 WHEREAS, In Public Works Order No. 210239, dated March 14, 2024, the Director
4 recommended that the Board of Supervisors approve the subject Permit and its draft
5 Encroachment Permit Agreements, which order and related documents are on file with the
6 Clerk of the Board of Supervisors in File No. 240203 and incorporated herein by reference;
7 and

8 WHEREAS, In the same Order, the Director determined under Public Works Code,
9 Section 786.7(f)(3) that the public right-of-way occupancy assessment fees for Port
10 Encroachments and Conduit MEP are waived because all the encroachments are a condition
11 of the DDA and Development Agreement; and

12 WHEREAS, On January 23, 2024, the Port Commission held a public hearing and
13 adopted Resolution Nos. 24-03 and 24-04 to take various actions and make
14 recommendations regarding the Board of Supervisors consideration of accepting Phase 1
15 public infrastructure and regarding the encroachments described above; and

16 WHEREAS, Copies of the Port Commission Resolutions are on file with the Clerk of
17 the Board of Supervisors in File No. 240203 and are incorporated herein by reference; and

18 WHEREAS, In a letter dated January 25, 2024 (the “Planning Department Letter”), the
19 Planning Department determined that the actions contemplated in this Resolution comply with
20 the California Environmental Quality Act (“CEQA”, California Public Resources Code,
21 Sections 21000 et seq.) and that the contemplated actions do not trigger the need for
22 subsequent environmental review (the “Environmental Findings”), which determination is on
23 file with the Clerk of the Board of Supervisors in File No. 240203 and is incorporated herein by
24 reference, and the Board affirms this determination; and

1 WHEREAS, The Planning Department also determined in its Letter that the actions
2 contemplated in this Resolution are consistent, on balance, with the City’s General Plan, and
3 eight priority policies of Planning Code, Section 101.1; now, therefore, be it

4 RESOLVED, The Board of Supervisors affirms the Planning Department’s CEQA
5 determination and adopts the Environmental Findings as its own; and, be it

6 FURTHER RESOLVED, That the Board finds that the Permit is consistent with the
7 General Plan, and the eight priority policies of Planning Code, Section 101.1 for the reasons
8 set forth in the Planning Department Letter; and, be it

9 FURTHER RESOLVED, The Board accepts the recommendations of the Public Works
10 Order No. 240203 and approves the Permit, including the Port IMEP and Conduit MEP, as set
11 forth below; and, be it

12 FURTHER RESOLVED, Pursuant to Public Works Code, Sections 786 et seq., the
13 Board hereby grants revocable, non-exclusive, and non-possessory permission to the Port to
14 occupy the public right-of-way for purposes of maintaining the Port Encroachments, including
15 the Port Phase 1 Encroachments, under the terms of the Port IMEP; and, be it

16 FURTHER RESOLVED, Pursuant to Public Works Code, Section 786(b), the Board
17 hereby delegates to the Public Works Director, in consultation with the Port, the authority
18 under the Port IMEP to assign or approve the assignment of sidewalk responsibility and
19 liability to FC Pier 70, an HOA, or other entity in the future; and, be it

20 FURTHER RESOLVED, Pursuant to Public Works Code, Sections 786 et seq., the
21 Board hereby grants revocable, non-exclusive, and non-possessory permission to FC Pier 70
22 to occupy existing joint trench in the public right-of-way for the Phase 1 streets for purposes of
23 maintaining an excess telecommunications conduit, under the terms of the Conduit MEP
24 portion of the Permit on a temporary basis; and, be it
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1 FURTHER RESOLVED, The Permit for the encroachments shall not become effective
2 until each Permittee executes and acknowledges the Permit and delivers said Permit and all
3 required documents to Public Works; and, be it

4 FURTHER RESOLVED, Each Permittee, at its sole expense and as is necessary as a
5 result of this permit, shall make the following arrangements:

6 (1) To provide for the support and protection of facilities under the jurisdiction of
7 Public Works, the San Francisco Public Utilities Commission, the San Francisco Fire
8 Department, other City Departments, and public utility companies;

9 (2) To provide access to such facilities to allow said entities to construct,
10 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit;

11 (3) To remove or relocate such facilities if installation of encroachments
12 requires said removal or relocation and to make all necessary arrangements with the owners
13 of such facilities, including payment for all their costs, should said removal or relocation be
14 required; and

15 (4) Each Permittee shall assume all costs for the maintenance and repair of the
16 encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
17 Public Works by reason of this permission granted; and, be it

18 FURTHER RESOLVED, No structures shall be erected or constructed within the public
19 right-of-way except as specifically permitted herein; and, be it

20 FURTHER RESOLVED, The Board delegates to the Public Works Director the
21 authority to: 1) approve and, if required, record said Permit and associated Agreements on
22 substantially the same terms as the drafts on file with the Clerk of the Board in Board File
23 No. 240203 and incorporated herein by reference; 2) divide the Permit into separate master
24 encroachment permits, major encroachment permits, or individual street encroachment
25 permits; 3) approve contiguous and non-contiguous annexation of new areas of the project

1 site into the Permit; and 4) approve assignments of rights and obligations from the original
2 permittee to the permittee’s agent or assignee; and, be it

3 FURTHER RESOLVED, That the Board directs the Public Works Director to submit a
4 copy of the final Permit and Agreements within 30 days of final issuance or execution,
5 whichever last occurs, to the Clerk of the Board; and, be it

6 FURTHER RESOLVED, The Board also authorizes the Director of Public Works to
7 perform and exercise the City’s rights and obligations under the Permit and to enter into
8 amendments or modifications to the Permit and associated Agreements; and, be it

9 FURTHER RESOLVED, That such actions may include without limitation, those
10 amendments or modifications that the Public Works Director, in consultation with the City
11 Attorney, determines are in the best interest of the City, do not materially increase the
12 obligations or liabilities of the City or materially decrease the obligations of the Permittee or its
13 successors, are necessary or advisable to effectuate the purposes of the Permit or this
14 resolution with respect to the encroachments, and are in compliance with all applicable laws;
15 and, be it

16 FURTHER RESOLVED, The Board, under Public Works Code, Section 786.7,
17 acknowledges waiver of the public right-of-way occupancy assessment fee in accordance with
18 the DDA, Development Agreement, and the Public Works Director’s determination for the Port
19 IMEP and Conduit MEP.

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