

1 [Levying Special Taxes - Special Tax District No. 2022-1 (Power Station)]

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3 **Ordinance levying special taxes within the City and County of San Francisco Special**
4 **Tax District No. 2022-1 (Power Station).**

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

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

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12 Section 1. The Board of Supervisors of the City and County of San Francisco hereby
13 finds, determines and declares based on the record before it that:

14 (a) Under Chapter 43, Article X of the Administrative Code (“Code”), which Code
15 incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended
16 (“Mello-Roos Act”), on January 25, 2022, this Board of Supervisors (“Board of Supervisors”) of
17 the City and County of San Francisco (“City”), State of California, adopted its Resolution No.
18 030-22 entitled “Resolution of intention to establish City and County of San Francisco Special
19 Tax District No. 2022-1 (Power Station), Improvement Area No. 1 and a Future Annexation
20 Area, and determining other matters in connection therewith” (“Resolution of Intention to
21 Establish”) stating its intention to establish (i) “City and County of San Francisco Special Tax
22 District No. 2022-1 (Power Station)” (“Special Tax District”), (ii) “Improvement Area No. 1 of
23 the City and County of San Francisco Special Tax District No. 2022-1 (Power Station)”
24 (“Improvement Area No. 1”), and (iii) “City and County of San Francisco Special Tax District
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1 No. 2022-1 (Power Station) (Future Annexation Area)” (“Future Annexation Area”), to finance
2 the acquisition and construction of certain facilities and services.

3 (b) The property in the Special Tax District is proposed for development with a
4 project known as the Potrero Power Station ("Project").

5 (c) In the Resolution of Intention to Establish, this Board of Supervisors determined
6 that it may be necessary to designate additional improvement areas when territory in the
7 Future Annexation Area annexes into the Special Tax District (each, a “Future Improvement
8 Area”).

9 (d) Notice was published as required by the Code relative to the intention of this
10 Board of Supervisors to form the Special Tax District, Improvement Area No. 1 and the Future
11 Annexation Area, to provide for certain facilities and services and to incur bonded
12 indebtedness and other debt (as defined in the Mello-Roos Act) for Improvement Area No. 1
13 and the Future Improvement Areas.

14 (e) This Board of Supervisors has held noticed public hearings as required by the
15 Code relative to (i) the determination to proceed with the formation of the Special Tax District,
16 Improvement Area No. 1 and Future Annexation Area, and the rate and method of
17 apportionment of the special tax to be levied within Improvement Area No. 1 to finance a
18 portion of the costs of the facilities and services and (ii) the issuance of bonded indebtedness
19 and other debt for Improvement Area No. 1 and the Future Improvement Areas.

20 (f) At said public hearings all persons desiring to be heard on all matters pertaining
21 to the formation of the Special Tax District, Improvement Area No. 1 and the Future
22 Annexation Area, and the levy of said special taxes were heard, substantial evidence was
23 presented and considered by this Board of Supervisors and a full and fair hearing was held.

24 (g) Subsequent to the public hearings, this Board of Supervisors adopted its
25 Resolution No. 83-22 entitled “Resolution of formation of City and County of San Francisco

1 Special Tax District No. 2022-1 (Potrero Power Station), Improvement Area No. 1 and a
2 Future Annexation Area, and determining other matters in connection therewith” (“Resolution
3 of Formation”), its Resolution No. 84-22 entitled “Resolution determining necessity to incur
4 bonded indebtedness and other debt for the City and County of San Francisco Special Tax
5 District No. 2022-1 (Power Station), and determining other matters in connection therewith”
6 (“Resolution of Necessity”) and its Resolution No. 82-22 entitled “Resolution calling special
7 election in Improvement Area No. 1 of the City and County of San Francisco Special Tax
8 District No. 2022-1 (Power Station), and determining other matters in connection therewith,”
9 which resolutions defined the facilities to be financed by the Special Tax District, (“Facilities”)
10 and the contingent services to be financed by the Special Tax District (“Contingent Services”),
11 established the Special Tax District, Improvement Area No. 1 and Future Annexation Area,
12 authorized the levy of a special tax within Improvement Area No. 1, determined the necessity
13 to (i) incur bonded indebtedness in the maximum aggregate principal amount of \$800 million
14 (“Improvement Area No. 1 Bonded Indebtedness Limit”) and other debt (as defined in the
15 Mello-Roos Act) for Improvement Area No. 1 upon the security of the special tax to be levied
16 in Improvement Area No. 1 and (ii) incur bonded indebtedness in the maximum aggregate
17 principal amount of \$63 million (“Non-Improvement Area No. 1 Bonded Indebtedness Limit”)
18 and other debt (as defined in the Mello-Roos Act) for the territory in the Special Tax District
19 that is not in Improvement Area No. 1 upon the security of the special tax to be levied in such
20 territory pursuant to the Code, and called an election within Improvement Area No. 1 on the
21 propositions of incurring bonded indebtedness and other debt for Improvement Area No. 1,
22 levying a special tax in Improvement Area No. 1, and establishing an appropriations limit for
23 the Special Tax District, respectively.

24 The list of Facilities and Contingent Services in Exhibit A is included in this Ordinance
25 in order to comply with Sections 43.10.15 and 43.10.16, respectively, of the Code.

1 (h) In the Resolution of Formation, this Board of Supervisors made certain findings
2 under the California Environmental Quality Act (“CEQA”) about the Final Environmental
3 Impact Report (“FEIR”) for the disposition and development of the Project, and those findings
4 are incorporated in this Ordinance as if set forth in their entirety herein.

5 (i) On March 21, 2022 a special election was held within Improvement Area No. 1
6 at which the eligible landowner-electors approved such propositions by the two-thirds vote
7 required by the Code.

8 Section 2. By the passage of this Ordinance this Board of Supervisors hereby
9 authorizes and levies special taxes within Improvement Area No. 1, at the rate and in
10 accordance with the formula (“Rate and Method”) set forth in the Resolution of Formation,
11 which Resolution of Formation is by this reference incorporated herein. The special taxes are
12 hereby levied commencing in fiscal year 2022-23 and in each fiscal year thereafter for the
13 period and for the purposes provided in the Rate and Method, as contemplated by the
14 Resolution of Formation and the Resolution of Necessity.

15 The designation as an improvement area of any territory annexing to the Special Tax
16 District, the maximum amount of bonded indebtedness for such improvement area, the rate
17 and method of apportionment of special tax for such improvement area and the appropriations
18 limit for such improvement area shall be identified and approved in the unanimous approval
19 executed by property owners in connection with their annexation to the Special Tax District
20 (each, a “Unanimous Approval”) and in accordance with the Annexation Approval Procedures
21 described in the Resolution of Formation, and the amount of the maximum indebtedness for
22 such improvement area shall be subtracted from the Non-Improvement Area No. 1
23 Indebtedness Limit as set forth in a resolution of this Board of Supervisors, which shall result
24 in a reduction in the Non-Improvement Area No. 1 Indebtedness Limit.

1 This Board of Supervisors hereby authorizes (i) the levy of special taxes on parcels in
2 the Future Annexation Area that are annexed into the Special Tax District (whether as part of
3 a then-existing improvement area or as a newly-designated improvement area) at the rate or
4 rates approved in the applicable Unanimous Approval and in accordance with the Annexation
5 Approval Procedures described in the Resolution of Formation, and (ii) the apportionment and
6 collection of the special taxes approved pursuant to the applicable Unanimous Approval and
7 the Annexation Approval Procedures in the manner specified in the Resolution of Formation.

8 The Director of the Office of Public Finance of the City is hereby authorized and
9 directed each fiscal year to determine the specific special tax rate and amount to be levied for
10 the next ensuing fiscal year for each parcel of real property within Improvement Area No. 1
11 and each Future Improvement Area, in the manner and as provided in the Resolution of
12 Formation or the applicable Unanimous Approval.

13 Except as provided in the Rate and Method or the rate and method of apportionment of
14 special tax for a Future Improvement Area, properties or entities of the State, federal or local
15 governments shall be exempt from any levy of the special taxes. Other parcels shall be
16 exempt from the levy of the special tax as provided in the Rate and Method or the rate and
17 method of apportionment of special for a Future Improvement Area. In no event shall the
18 special taxes be levied on any parcel within Improvement Area No. 1 or a Future Improvement
19 Area (including any parcels in the Future Annexation Area that are annexed into the Special
20 Tax District) in excess of the maximum tax specified in the Resolution of Formation or the
21 applicable Unanimous Approval for a Future Improvement Area.

22 All of the collections of the special tax shall be used as provided for in the Code, in the
23 Resolution of Formation, or in the applicable Unanimous Approval, including, but not limited
24 to, the payment of principal and interest on bonds and other debt (as defined in the Mello-
25 Roos Act) issued by the City for Improvement Area No. 1 or a Future Improvement Area

1 (“Bonds”), the replenishment of the reserve fund for the Bonds, the payment of the costs of
2 the Facilities and the Contingent Services, the payment of the costs of the City in
3 administering the Special Tax District, and the costs of collecting and administering the
4 special tax.

5 The special taxes shall be collected in the same manner as ordinary *ad valorem* taxes
6 are collected and shall have the same lien priority, and be subject to the same penalties and
7 the same procedure and sale in cases of delinquency as provided for ad valorem taxes;
8 provided, however, that this Board of Supervisors may provide for other appropriate methods
9 of collection by resolutions of this Board of Supervisors. In addition, the provisions of Mello-
10 Roos Act Section 53356.1 shall apply to delinquent special tax payments. The Director of the
11 Office of Public Finance of the City is hereby authorized and directed to provide all necessary
12 information to the auditor/tax collector of the City and County of San Francisco in order to
13 effect proper billing and collection of the special tax, so that the special tax shall be included
14 on the secured property tax roll of the City and County of San Francisco for fiscal year 2022-
15 23 and for each fiscal year thereafter until the Bonds or other debt is paid in full or such longer
16 period of time provided in the Rate and Method with respect to Improvement Area No. 1, or
17 the rate and method of apportionment of special tax for the applicable Future Improvement
18 Area.

19 Section 3. If for any reason the special tax is found inapplicable to any particular parcel
20 within Improvement Area No. 1 or a Future Improvement Area, by a court of competent
21 jurisdiction, the application of the special tax to the remaining parcels within Improvement
22 Area No. 1 or Future Improvement Area (including any parcels in the Future Annexation Area
23 that are annexed into the Special Tax District) shall not be affected. Furthermore, if any
24 section, subsection, sentence, clause, phrase, or word of this ordinance, or any application
25 thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of

1 a court of competent jurisdiction, such decision shall not affect the validity of the remaining
2 portions or applications of this ordinance, this Board of Supervisors hereby declaring that it
3 would have passed this ordinance and each and every section, subsection, sentence, clause,
4 phrase, and word not declared invalid or unconstitutional without regard to whether any other
5 portion of this ordinance or application thereof would be subsequently declared invalid or
6 unconstitutional.

7 Section 4. 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
9 does not sign the ordinance within 10 days of receiving it, or the Board of Supervisors
10 overrides the Mayor's veto of the ordinance.

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

14 By: /s/ MARK D. BLAKE
15 MARK D. BLAKE
16 Deputy City Attorney

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EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO
Special Tax District No. 2022-1
(Power Station)

DESCRIPTION OF FACILITIES AND SERVICES TO BE FINANCED BY THE
SPECIAL TAX DISTRICT AND EACH IMPROVEMENT AREA THEREIN

FACILITIES

The Special Tax District (and each Improvement Area therein, as originally designated and as designated in the future in conjunction with the annexation of the Future Annexation Area) shall be authorized to finance all or a portion of the costs of the acquisition, construction, improvement, maintenance, repair or replacement of improvements authorized by Chapter 43, Article X of the San Francisco Administrative Code (as it may be amended from time to time, "Code"), which Code incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended ("Mello-Roos Act"), including, but not limited to, the improvements described below that are either owned by the City and County of San Francisco (including through its Port Commission or other City agencies, collectively, "City") or privately-owned and privately-maintained but dedicated to public access and use. Capitalized terms used herein but not defined herein have the meanings given them in the Development Agreement by and between the City and California Barrel Company LLC, dated September 22, 2020, relating to the Potrero Power Station development project, as amended from time to time (including all exhibits thereto, "Development Agreement").

- Shoreline Improvements: Maintenance, repair, and replacement of improvements in the Shoreline Area undertaken following Completion of the initial Improvements to that area required under the Development Agreement
- Future Sea Level Rise Improvements: Future improvements deemed necessary or appropriate by the City to ensure that the shoreline, related public or publicly accessible facilities (located on public or private property), and public access improvements will be protected should sea level rise at or near the Project Site.
- Additional Community Facilities: (i) Public facilities (located on public or private property) that serve the Project Site, including maintenance, restoration, rehabilitation, reconstruction or replacement of facilities previously financed under the Financing Plan of the Development Agreement, (ii) Future Sea Level Rise Improvements and (iii) Shoreline Improvements.

- 1 • Infrastructure: Infrastructure to be constructed by Developer as described in the Infrastructure Plan attached as Exhibit G to the Development Agreement.
- 2 • Parks and Open Space: All of the publicly-accessible open spaces developed in accordance with the Design for Development attached as Exhibit E to the Development Agreement.
- 3 • Public Improvements: The facilities, both on- and off-site, to be improved, constructed and dedicated by Developer and, upon Completion in accordance with the Development Agreement, accepted by the City. Public Improvements include the streets within the Project Site shown on Exhibit N of the Development Agreement, and all Infrastructure and public utilities within such streets (such as electricity, water and sewer lines but excluding any non-municipal utilities), including sidewalks, landscaping, bicycle lanes, bus boarding island, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping). The Public Improvements also include the SFPUC Infrastructure, and the SFMTA Infrastructure. The Public Improvements do not include Privately-Owned Community Improvements or, if any, privately owned facilities or improvements in the public right of way.
- 4 • Privately-Owned Community Improvements: Those facilities and services that are privately-owned and privately-maintained, at no cost to the City (other than any public financing set forth in the Financing Plan), for the public benefit and not dedicated to the City, including any Infrastructure that is not a Public Improvement. The Privately-Owned Community Improvements are shown generally on Exhibit L-1 of the Development Agreement and further described in the Design for Development. Privately-Owned Community Improvements include certain pedestrian paths, alleys (such as Craig Lane) storm drainage facilities, open spaces, SFMTA employee restroom, Muni bus shelter, and community or recreation facilities to be built on land owned by Developer, or on land owned by the City if the Privately-Owned Community Improvements thereon are subject to an encroachment permit or other permit allowing their installation on such land.

