

1 [Development Agreement - 181 Fremont Street, LLC - 181 Fremont Street - Transbay  
2 Redevelopment Project Area]

3 **Ordinance approving a Development Agreement between the City and County of San**  
4 **Francisco and 181 Fremont Street, LLC, for certain real property, known as 181**  
5 **Fremont Street, located in the Transbay Redevelopment Project Area, consisting of two**  
6 **parcels located on the east side of Fremont Street, between Mission and Howard**  
7 **Streets; making findings of conformity with the General Plan, and the eight priority**  
8 **policies of Planning Code, Section 101.1(b); and waiving certain provisions of**  
9 **Administrative Code, Chapter 56 and Planning Code, Section 249.28.**

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

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

18 Section 1. Project Findings. The Board of Supervisors makes the following findings:

19 (a) California Government Code, Sections 65864 et seq. authorizes any city,  
20 county, or city and county to enter into an agreement for the development of real property  
21 within their respective jurisdiction.

22 (b) Administrative Code, Chapter 56 (“Chapter 56”) sets forth certain procedures for  
23 the processing and approval of development agreements in the City and County of San  
24 Francisco (the “City”).

25 (c) 181 Fremont Street, LLC, a Delaware limited liability company (the “Developer”),  
is the owner of that certain real property located at 181 Fremont Street, which is an irregularly

1 shaped property formed by two parcels measuring a total of 15,313 square feet, located on  
2 the east side of Fremont Street, between Mission and Howard Streets in the Transbay  
3 Redevelopment Project Area (the “Project Site”).

4 (d) On December 6, 2012, the Planning Commission approved Motions 18763,  
5 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on  
6 March 15, 2013) (collectively, the “**Approvals**”). The Approvals approved a project on the  
7 Project Site (the “**Project**”) that would demolish an existing three-story building and an  
8 existing two-story building, and construct a 52-story building reaching a roof height of  
9 approximately 700 feet with a decorative screen reaching a maximum height of approximately  
10 745 feet and a spire reaching a maximum height of approximately 800 feet, containing  
11 approximately 404,000 square feet of office uses, approximately 74 dwelling units,  
12 approximately 2,000 square feet of retail space, and approximately 68,000 square feet of  
13 subterranean area with off-street parking, loading, and mechanical space. The Project also  
14 includes a bridge to the future elevated City Park situated on top of the Transbay Transit  
15 Center. The Approvals are on file with the Planning Department, located at 1650 Mission  
16 Street, Suite 400, San Francisco, CA 94103.

17 (e) On June 5, 2014, Developer filed a request with the Office of Community  
18 Investment and Infrastructure (“OCII” or “Successor Agency”) for a Plan Variation pursuant to  
19 Section 3.5.5\_\_\_ of the Transbay Project Area Redevelopment Plan (the “Plan”) for a  
20 variation from the on-site affordable housing requirements of Section 4.9.3 of the Plan (the  
21 “Plan’s Inclusionary Housing Obligation”) as well as a request to the City’s Planning  
22 Department for a waiver from Section 249.28(b)(6) of the Planning Code (the “Requested  
23 Variations from On-Site Affordable Housing”).

24 (f) The Developer has submitted the Requested Variations from On-Site Affordable  
25 Housing for variations from the Plan and a waiver from the City’s Planning Code in exchange

1 for the payment of \$13,850,000 to the City for use by OCII for the provision of affordable  
2 housing within the Project Area, all as further described in the proposed development  
3 agreement, a copy of which is on file with the Clerk of the Board in File No. \_\_\_\_\_ (the  
4 “Development Agreement”).

5 (g) The City has determined that as a result of the development of the Project Site  
6 in accordance with the Development Agreement, clear benefits to the public will accrue that  
7 could not be obtained through application of existing City ordinances, regulations, and  
8 policies, as more particularly described in the Development Agreement. The Development  
9 Agreement will provide OCII the ability to subsidize up to approximately 69 affordable housing  
10 units, with a net gain of 58 affordable units at the deepest affordability levels.

11 (h) On \_\_\_\_\_, 2014, at a duly noticed public hearing, the Commission  
12 on Community Investment and Infrastructure (“CCII”) (as the Commission to the OCII), in  
13 Resolution No. \_\_\_\_\_, conditionally approved, by Resolution No. \_\_\_\_\_, the  
14 Developer’s requested Plan Variation and the change to the Plan’s Inclusionary Housing  
15 Obligation because of the infeasibility of maintaining affordable units in the Project and the  
16 payment of \$13,850,000 for affordable housing. Said Resolution is on file with the Clerk of the  
17 Board in File No. \_\_\_\_\_ and is incorporated herein by reference. Under Section 6  
18 (a) of Ordinance No. 215-12, the Board of Supervisors delegated certain authority under  
19 Redevelopment Dissolution Law, Cal. Health and Safety Code, Section 34170 et seq., to the  
20 CCII, but required that it not materially change its affordable housing obligations without  
21 obtaining the approval of the Board of Supervisors. Given that the CCII’s conditional approval  
22 of the Plan Variation potentially removes the on-site affordable housing requirements of  
23 Section 4.9.3 of the Plan from the Project, the Board of Supervisors, acting as the legislative  
24 body for OCII, must approve the change to the Plan’s Inclusionary Housing Obligation.

1 (i) The Board of Supervisors, acting in its capacity as the legislative body for the  
2 CCII has reviewed the basis for CCII's conditional approval of the Plan Variation and has  
3 determined that the changes to the Plan's Inclusionary Housing Obligation will comply with,  
4 and facilitate the fulfillment of, OCII's affordable housing obligations by significantly increasing  
5 the amount of affordable housing that would otherwise be available at the Project under the  
6 Plan's Inclusionary Housing Obligation. Accordingly, on \_\_\_\_\_, 2014, at a  
7 duly noticed public hearing, the Board of Supervisors, acting as the legislative body for the  
8 CCII approved, by Resolution No. \_\_\_\_\_, the change to the Plan's Inclusionary Housing  
9 Obligation. Said Resolution is on file with the Clerk of the Board in File No. \_\_\_\_\_  
10 and is incorporated herein by reference.

11 (j) On \_\_\_\_\_, 2014, at a duly noticed public hearing, the Planning  
12 Commission approved Motion No. \_\_\_\_\_ (the "Section 309 approval") to revise its prior  
13 decision under Planning Code, Section 309 to allow the Developer to make an in-lieu payment  
14 for affordable housing instead of constructing affordable housing on-site. At that same  
15 hearing, the Planning Commission adopted Motion/Resolution No. \_\_\_\_\_ to adopt  
16 findings of consistency with the General Plan, and the eight priority policies of Planning Code,  
17 Section 101.1 in regard to the Development Agreement (the "Development Agreement  
18 recommendation"). This action also included findings under Section 302 of the Planning Code  
19 that the Development Agreement legislation, which includes a waiver of Planning Code,  
20 Section 249.28(b)(6) (Transbay C-3 Special Use District on-site affordable housing  
21 requirement) is required to serve the public necessity, convenience, and general welfare. The  
22 action also recommended that the Board of Supervisors approve the Development  
23 Agreement. The Planning Commission's Section 309 approval and Development Agreement  
24 recommendation are on file with the Clerk of the Board in File No. \_\_\_\_\_ and  
25 incorporated herein by reference.

1           Section 2. California Environmental Quality Act.

2           The Board’s approval of the Development Agreement does not compel any direct or  
3 indirect physical changes in the Project that the Planning Commission previously approved.  
4 Rather, approval of the Development Agreement merely authorizes the Commission on  
5 Community Investment and Infrastructure, Planning Commission and Board of Supervisors to  
6 remove the requirement for inclusionary housing from the Project and to accept affordable  
7 housing funding. Thus, approval of the Development Agreement and authorizing the future  
8 acceptance of \$13,850,000 for the Transbay Affordable Housing Obligation does not  
9 constitute a project under the California Environmental Quality Act (“CEQA”), CEQA  
10 Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely  
11 creates a government funding mechanism that does not involve any commitment to a specific  
12 project.

13  
14           Section 3. General Plan and Planning Code Section 101.1(b) Findings.

15           (a)    The Board of Supervisors finds that the Development Agreement, including the  
16 waiver of Planning Code, Section 249.28(b)(6), will serve the public necessity, convenience  
17 and general welfare for the reasons set forth in Planning Commission Resolution  
18 No. \_\_\_\_\_.

19           (b)    The Board of Supervisors finds that the Development Agreement is, on balance,  
20 in conformity with the General Plan, and the eight priority policies of Planning Code, Section  
21 101.1 for the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_. The Board  
22 hereby adopts the findings set forth in Planning Commission Resolution No. \_\_\_\_\_ as its  
23 own.

1           Section 4. Development Agreement.

2           (a)     The Board of Supervisors approves all of the terms and conditions of the  
3     Development Agreement, in substantially the form on file with the Clerk of the Board of  
4     Supervisors in File No. \_\_\_\_\_.

5           (b)     The Board of Supervisors approves and authorizes the execution, delivery and  
6     performance by the City of the Development Agreement, subject to the Developer's payment  
7     of all City costs with respect to the Development Agreement. Upon receipt of the payment of  
8     City's costs billed to Developer, the Director of Planning is authorized to execute and deliver  
9     the Development Agreement, and (ii) the Director of Planning and other applicable City  
10    officials are authorized to take all actions reasonably necessary or prudent to perform the  
11    City's obligations under the Development Agreement in accordance with the terms of the  
12    Development Agreement and Chapter 56, as applicable. The Director of Planning, at his or  
13    her discretion and in consultation with the City Attorney, is authorized to enter into any  
14    additions, amendments or other modifications to the Development Agreement that the  
15    Director of Planning determines are in the best interests of the City and that do not materially  
16    increase the obligations or liabilities of the City or decrease the benefits to the City under the  
17    Development Agreement, subject to the approval of any affected City agency as more  
18    particularly described in the Development Agreement.

19  
20           Section 5. Administrative Code Chapter 56 and Planning Code Section 249.28  
21     Waivers; Ratification.

22           (a)     In connection with the Development Agreement, the Board of Supervisors finds  
23     that the requirements of Administrative Code, Chapter 56 have been substantially complied  
24     with, and hereby waives any procedural or other requirements of Chapter 56 if and to the  
25     extent that they have not been complied with.

1 (b) In consideration of the terms of the Development Agreement and the grant of a  
2 variation from the on-site affordable housing requirements of Section 4.9.3 of the Plan, the  
3 Board waives the requirements of Planning Code, Section 249.28(b)(6) regarding the  
4 requirement for on-site affordable housing in the Transbay Redevelopment Plan Zone 2.

5 (c) All actions taken by City officials in preparing and submitting the Development  
6 Agreement to the Board of Supervisors for review and consideration are hereby ratified and  
7 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
8 by City officials consistent with this Ordinance.

9  
10 Section 6. Effective Date. This ordinance shall become effective 30 days after  
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
13 of Supervisor’s overrides the Mayor’s veto of the ordinance.

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17 By: \_\_\_\_\_  
18 Heidi J. Gewertz  
19 Deputy City Attorney

20 n:\spec\as2014\1500113\00960221.doc