

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

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

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

- (a) California Government Code, Sections 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within their respective jurisdiction.
- (b) Administrative Code, Chapter 56 (“Chapter 56”) sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the “City”).
- (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 variation  
20 from the on-site affordable housing requirements of Section 4.9.3 of the Plan (the “Plan’s  
21 Inclusionary Housing Obligation”) as well as a request to the City’s Planning Department for a  
22 waiver from Section 249.28(b)(6) of the Planning Code (the “Requested Variations from On-  
23 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. 141023 (the  
4 “Development Agreement”).

5 (g) Because the City is entering into a development agreement with the Developer  
6 addressing, among other issues, the amount of the Developer’s affordable housing  
7 contribution, the Project is consistent with Charter Section 16.110(h)(1)(B)(i) (adopted as part  
8 of the Housing Trust Fund, Proposition C, November 6, 2012).

9 (h) The Developer has also agreed in the Development Agreement to certain  
10 obligations as related to a proposed Mello-Roos Community Facilities District (“CFD”) which  
11 shall cover the Project, including: (1) to vote in favor of a City-proposed CFD covering the Site  
12 provided that the tax rates are not greater than the Base Special Tax Rate in the established  
13 Rate and Method of Apportionment (the “RMA”) as attached to the Development Agreement  
14 and (2) to pay to the City, for transmittal to the Transbay Joint Powers Authority, and retention  
15 by the City as applicable, if a CFD has not established as of the date that a Final Certificate of  
16 Occupancy is issued to the Developer for the Project, the estimated CFD taxes amount that  
17 would otherwise be due if the CFD had been established in accordance with the rates  
18 established in the RMA (the “CFD Payments”).

19 (i) The City has determined that as a result of the development of the Project Site in  
20 accordance with the Development Agreement, clear benefits to the public will accrue that  
21 could not be obtained through application of existing City ordinances, regulations, and  
22 policies, as more particularly described in the Development Agreement. Specifically, the  
23 Development Agreement will provide OCII the ability to subsidize up to approximately 69  
24 affordable housing units, with a net gain of 58 affordable units at the deepest affordability  
25 levels as well as providing the CFD Payments.

1           (j)       On October 10, 2014, at a duly noticed public hearing, the Commission on  
2       Community Investment and Infrastructure (“CCII”) (as the Commission to the OCII), in  
3       Resolution No.80-2014, conditionally approved, by Resolution No. 80-2014, the Developer’s  
4       requested Plan Variation and the change to the Plan’s Inclusionary Housing Obligation  
5       because of the infeasibility of maintaining affordable units in the Project and the payment of  
6       \$13,850,000 for affordable housing. Said Resolution is on file with the Clerk of the Board in  
7       File No. 141023 and is incorporated herein by reference. Under Section 6 (a) of Ordinance  
8       No. 215-12, the Board of Supervisors delegated certain authority under Redevelopment  
9       Dissolution Law, Cal. Health and Safety Code, Section 34170 et seq., to the CCII, but  
10       required that it not materially change its affordable housing obligations without obtaining the  
11       approval of the Board of Supervisors. Given that the CCII’s conditional approval of the Plan  
12       Variation potentially removes the on-site affordable housing requirements of Section 4.9.3 of  
13       the Plan from the Project, the Board of Supervisors, acting as the legislative body for OCII,  
14       must approve the change to the Plan’s Inclusionary Housing Obligation.

15           (k)       The Board of Supervisors, acting in its capacity as the legislative body for the  
16       CCII has reviewed the basis for CCII’s conditional approval of the Plan Variation and has  
17       determined that the changes to the Plan’s Inclusionary Housing Obligation will comply with,  
18       and facilitate the fulfillment of, OCII’s affordable housing obligations by significantly increasing  
19       the amount of affordable housing that would otherwise be available at the Project under the  
20       Plan’s Inclusionary Housing Obligation. Accordingly, on October 28, 2014, at a duly noticed  
21       public hearing, the Board of Supervisors, acting as the legislative body for the CCII approved,  
22       by Resolution No. \_\_\_\_\_, the change to the Plan’s Inclusionary Housing Obligation. Said  
23       Resolution is on file with the Clerk of the Board in File No. \_\_\_\_\_ and is  
24       incorporated herein by reference.

25

1           (l)       On October 16, 2014, at a duly noticed public hearing, the Planning Commission  
2 approved Motion No. 19262 (the “Section 309 approval”) to revise its prior decision under  
3 Planning Code, Section 309 to allow the Developer to make an in-lieu payment for affordable  
4 housing instead of constructing affordable housing on-site. At that same hearing, the  
5 Planning Commission adopted Resolution No. 19261 to adopt findings of consistency with the  
6 General Plan, and the eight priority policies of Planning Code, Section 101.1 in regard to the  
7 Development Agreement (the “Development Agreement recommendation”). This action also  
8 included findings under Section 302 of the Planning Code that the Development Agreement  
9 legislation, which includes a waiver of Planning Code, Section 249.28(b)(6) (Transbay C-3  
10 Special Use District on-site affordable housing requirement) is required to serve the public  
11 necessity, convenience, and general welfare. The action also recommended that the Board of  
12 Supervisors approve the Development Agreement. The Planning Commission’s Section 309  
13 approval and Development Agreement recommendation are on file with the Clerk of the Board  
14 in File No. 141023 and incorporated herein by reference.

15  
16           Section 2. California Environmental Quality Act.

17           The Board’s approval of the Development Agreement does not compel any direct or  
18 indirect physical changes in the Project that the Planning Commission previously approved.  
19 Rather, approval of the Development Agreement merely authorizes the Commission on  
20 Community Investment and Infrastructure, Planning Commission and Board of Supervisors to  
21 remove the requirement for inclusionary housing from the Project and to accept affordable  
22 housing funding. Thus, approval of the Development Agreement and authorizing the future  
23 acceptance of \$13,850,000 for the Transbay Affordable Housing Obligation does not  
24 constitute a project under the California Environmental Quality Act (“CEQA”), CEQA  
25 Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely

1 creates a government funding mechanism that does not involve any commitment to a specific  
2 project.

3  
4  
5 Section 3. General Plan and Planning Code Section 101.1(b) Findings.

6 (a) The Board of Supervisors finds that the Development Agreement, including the  
7 waiver of Planning Code, Section 249.28(b)(6), will serve the public necessity, convenience  
8 and general welfare for the reasons set forth in Planning Commission Resolution No. 19261.

9 (b) The Board of Supervisors finds that the Development Agreement is, on balance,  
10 in conformity with the General Plan, and the eight priority policies of Planning Code, Section  
11 101.1 for the reasons set forth in Planning Commission Resolution No. 19261. The Board  
12 hereby adopts the findings set forth in Planning Commission Resolution No. 19261 as its own.

13  
14 Section 4. Development Agreement.

15 (a) The Board of Supervisors approves all of the terms and conditions of the  
16 Development Agreement, in substantially the form on file with the Clerk of the Board of  
17 Supervisors in File No. 141023.

18 (b) The Board of Supervisors approves and authorizes the execution, delivery and  
19 performance by the City of the Development Agreement, subject to the Developer's payment  
20 of all City costs with respect to the Development Agreement. Upon receipt of the payment of  
21 City's costs billed to Developer, the Director of Planning is authorized to execute and deliver  
22 the Development Agreement, and (ii) the Director of Planning and other applicable City  
23 officials are authorized to take all actions reasonably necessary or prudent to perform the  
24 City's obligations under the Development Agreement in accordance with the terms of the  
25 Development Agreement and Chapter 56, as applicable. The Director of Planning, at his or

1 her discretion and in consultation with the City Attorney, is authorized to enter into any  
2 additions, amendments or other modifications to the Development Agreement that the  
3 Director of Planning determines are in the best interests of the City and that do not materially  
4 increase the obligations or liabilities of the City or decrease the benefits to the City under the  
5 Development Agreement, subject to the approval of any affected City agency as more  
6 particularly described in the Development Agreement.

7  
8 Section 5. Administrative Code Chapter 56 and Planning Code Section 249.28  
9 Waivers; Ratification.

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

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

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

22  
23 Section 6. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisor's overrides the Mayor's veto of the ordinance.

3

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

6 By: \_\_\_\_\_  
7 Heidi J. Gewertz  
8 Deputy City Attorney

9 n:\spec\as2014\1500113\00963130.doc

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25