

1 [Administrative Code Waivers - Public Offering of Port Property - "Parcel K North"]

2

3 **Ordinance approving the sale of Parcel K North, located at 20th Street and Illinois**  
 4 **Street, by the Port Commission; waiving certain provisions of the Administrative Code;**  
 5 **and adopting findings under the California Environmental Quality Act, public trust**  
 6 **findings, and findings of consistency with the General Plan, and the eight priority**  
 7 **policies of Planning Code Section 101.1(b).**

8

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

12

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

14

Section 1. Background.

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(a) In April 2011, the Port Commission of the City and County of San Francisco (the  
 16 "Port" or the "Port Commission") selected Forest City Development California, Inc., a  
 17 California corporation ("Forest City"), through a competitive process to negotiate exclusively  
 18 for the mixed-use development (the "28-Acre Site Project") of approximately 28 acres (the  
 19 "28-Acre Site") of Seawall Lot 349, a land parcel under Port jurisdiction that is bounded  
 20 generally by Illinois Street on the west, 22<sup>nd</sup> Street on the south, and San Francisco Bay on  
 21 the north and east, and commonly known as Pier 70. FC Pier 70, LLC, an affiliate of Forest  
 22 City, will act as the master developer for the 28-Acre Site Project ("Developer").

23

(b) The Planning Commission recommended by Resolution No. 19979 on  
 24 August 24, 2017, amendments to the Planning Code and related Zoning Map amendments  
 25 (the "SUD Amendments") to establish a Pier 70 Mixed-Use Special Use District (the "SUD")

1 comprising the 28-Acre Site, an adjacent 3-acre Port-owned site at 20<sup>th</sup> Street and Illinois  
2 Street known as “Parcel K,” and approximately 3 acres of land immediately south of Parcel K  
3 bisected by a public right-of-way owned by Pacific Gas and Electric Company (“PG&E”),  
4 known as the “Hoedown Yard,” which is subject to a City purchase option. A copy of the  
5 resolution and proposed SUD Amendments are in Board File No. 170864 and incorporated in  
6 this ordinance by reference.

7 (c) At the same meeting, the Planning Commission recommended that this Board  
8 approve a Development Agreement with Developer under Chapter 56 of the Administrative  
9 Code by Resolution No. 19981, a copy of which is in Board File No. 170864 and incorporated  
10 in this ordinance by reference. Among other things, the Development Agreement prohibits  
11 market-rate condominium developers in the 28-Acre Site from providing on-site inclusionary  
12 units and requires them to pay in-lieu affordable housing fees to the Mayor’s Office of Housing  
13 and Community Development (“MOHCD”) for development of 100% affordable housing in the  
14 SUD.

15 (d) The Port Commission has engaged in negotiations with the California State  
16 Lands Commission for a trust exchange agreement (the “Exchange Agreement”), as permitted  
17 under Assembly Bill 418 (Stats. 2011, ch. 477), that would impress or confirm the common  
18 law public trust and the statutory trust under the Burton Act (Stats. 1968, ch. 1333)  
19 (collectively, the “public trust”) on portions of Pier 70 most useful for public trust purposes and  
20 remove the public trust from areas more suitable for development for nontrust uses. The Port  
21 Commission approved the Exchange Agreement, subject to this Board’s approval, by  
22 Resolution No. 17-\_\_\_\_\_ on September 26, 2017, a copy of which is in Board File  
23 No. 170864 and incorporated in this ordinance by reference. If the Port and the State Lands  
24 Commission enter into the Exchange Agreement, development parcels at the 28-Acre Site  
25 and Parcel K would be free of public trust use restrictions and could be developed for housing.

1 (e) In anticipation of the trust exchange, the Port has initiated discussions with San  
2 Francisco Public Works and the County Surveyor to vacate an approximately 12-foot portion  
3 of Michigan Street adjacent to Parcel K, merge this land with Parcel K, and subdivide the  
4 resulting merged parcel into two new parcels, to be known as "Parcel K North" and "Parcel K  
5 South," as shown in Exhibit 1 to this ordinance. Under the Affordable Housing Plan (the  
6 "AHP") attached to the Disposition and Development Agreement (the "DDA") that is in Board  
7 File No. \_\_\_\_\_ for Resolution No. \_\_\_\_\_ for approval of the DDA and  
8 other documents and incorporated in this ordinance by reference, the Port will enter into a  
9 memorandum of understanding with MOHCD to ground lease for nominal rents Parcel K  
10 South and two development parcels in the 28-Acre Site, to be developed as 100% affordable  
11 housing. Under the AHP, developers of market-rate residential condominiums in the 28-Acre  
12 Site will not be permitted to build on-site inclusionary units, but will be required to pay  
13 affordable housing fees established by the Development Agreement to provide a funding  
14 source for MOHCD's affordable housing development in the SUD.

15 (f) Under the SUD Amendments, Parcel K North could be developed for residential  
16 use, supporting 239 or more market-rate condominium units and approximately 6,600 square  
17 feet of ground floor retail/arts/light industrial space. The DDA provides for the Port to publicly  
18 offer Parcel K North for sale at or above its fair market value as established by a proprietary  
19 appraisal.

20 (g) Subject to this Board's approval, the Port intends to offer the site for sale for  
21 market-rate condominium development at a minimum bid of its appraised fair market value  
22 with the assistance of a broker selected from the approved pool maintained by the City's Real  
23 Estate Division, for development as a market-rate residential condominium project and use  
24 the sales proceeds to pay for entitlement costs associated with the 28-Acre Project. The  
25 successful bidder would be required to enter into a vertical disposition and development

1 agreement with the Port substantially in the form on file in Board File No. \_\_\_\_\_ for this  
2 ordinance and incorporated in this ordinance by reference. Among other things, this  
3 agreement would require the developer to:

4 (i) close escrow within 12 months after this Board approves the sale  
5 or three months after the developer’s selection as the highest qualified bidder,  
6 whichever is earlier;

7 (ii) begin construction within 24 months after close of escrow;

8 (iii) comply with all applicable mitigation measures of the Mitigation  
9 Monitoring and Reporting Program (the “MMRP”), including Mitigation  
10 Measure M-AQ-1f, the Transportation Demand Management Plan;

11 (iv) comply with applicable land use restrictions, impact fees, and  
12 exactions imposed by the SUD Amendments, including a requirement to pay  
13 in-lieu affordable housing fees equal to 28% of the costs of on-site market-rate  
14 condominium units;

15 (v) require each condominium purchaser after the initial occupant to  
16 pay the Port a transfer fee of 1.5% of the net purchase price;

17 (vi) comply with measures applicable to development parcels in the  
18 SUD abutting Illinois Street substantially in the form attached to the DDA, a copy  
19 of which is in Board File No. \_\_\_\_\_ for Resolution No. \_\_\_\_\_ for  
20 approval of the DDA and other documents and incorporated in this ordinance by  
21 reference, which are intended to minimize potential conflicts between American  
22 Industrial Center activities and future residential uses at the site;

23 (vii) as a public benefit, build a public plaza described in the Design for  
24 Development approved by the Planning and Port Commissions;  
25

1 (viii) build a segment of Michigan Street, subject to reimbursement from  
2 public financing sources;

3 (ix) provide a limited amount of ground floor space at no charge to the  
4 San Francisco Public Utilities Commission for electrical equipment serving the  
5 SUD;

6 (x) if not previously formed, vote in favor of a community facilities  
7 district and covenant to pay special taxes when due;

8 (xi) comply with the First Source Hiring Program under Chapter 83 of  
9 the Administrative Code;

10 (xii) comply with the Local Hiring Policy for Construction under  
11 Section 6.22 of the Administrative Code; and

12 (xiii) comply with certain Local Business Enterprise (“LBE”)  
13 Subcontracting Participation Requirements to achieve participation by firms that  
14 have been certified as LBEs as set forth in Administrative Code Chapter 14B.

15 Section 2. Environmental Findings.

16 (a) At its hearing on August 24, 2017, before recommending the proposed Planning  
17 Code amendments for approval, the Planning Commission:

18 (i) certified a Final Environmental Impact Report (the “FEIR”) for the  
19 Pier 70 Mixed-Use District Project (the “SUD Project”) pursuant to the California  
20 Environmental Quality Act (“CEQA”) (Cal. Pub. Res. Code §§ 21000 et seq.),  
21 the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.), and Chapter 31 of  
22 the Administrative Code by Motion No. 19976; and

23 (ii) adopted findings under CEQA with respect to the SUD Project,  
24 rejected the alternatives to the SUD Project as infeasible, adopted a Statement  
25 of Overriding Considerations relating to approvals for the SUD Project based on

1 substantial evidence in the Planning Commission record for the CEQA  
2 proceedings (collectively, "CEQA Findings"), and adopted the MMRP by Motion  
3 No. 19977.

4 This Board has also reviewed the CEQA Findings and adopts these findings as its own.  
5 Copies of both Planning Commission motions are in in Board File No. 170864 and  
6 incorporated in this ordinance by reference.

7 (b) With respect to the actions to be taken by this ordinance, this Board has  
8 reviewed the FEIR and concurs with its conclusions, affirms the Planning Commission's  
9 certification of the FEIR, and finds that the approvals before this Board are within the scope of  
10 the FEIR and that no substantial changes in the SUD Project or the circumstances  
11 surrounding the SUD Project have occurred and no new information that could not have been  
12 known previously showing new significant impacts or an increase in the severity of impacts  
13 has been discovered since the Planning Commission certified the FEIR. This Board further  
14 finds that, to the extent that the Port's public offering of Parcel K North requires the Port to  
15 execute and deliver a vertical disposition and development agreement that would be subject  
16 to this Board's approval under Charter Section 9.118, the Port Commission and its Executive  
17 Director, as they deem necessary or appropriate in consultation with the City Attorney, are  
18 hereby authorized to enter into the vertical disposition and development agreement  
19 substantially in the form in Board File No. \_\_\_\_\_ for this ordinance, and the actions  
20 contemplated in this ordinance are within the scope of the SUD Project described and  
21 analyzed in the FEIR.

22 Section 3. Consistency Findings.

23 At its hearing on August 24, 2017, the Planning Commission, by Resolution No. 19978,  
24 found that the proposed General Plan amendments, the SUD Project, and the related  
25 approvals would promote the public welfare, convenience, and necessity, adopted findings

1 that the actions contemplated in this ordinance are consistent, on balance, with the City's  
2 General Plan and the eight priority policies of Planning Code Section 101.1(b), and  
3 recommended that this Board approve amendments to the General Plan for the SUD Project.  
4 The Board adopts these findings as its own. A copy of the Planning Commission resolution is  
5 in File No. 170864 and incorporated in this ordinance by reference.

6 Section 4. Approval of Sale.

7 This Board approves the Port's public offering of Parcel K North to the highest qualified  
8 bidder at a price no less than fair market value according to the procedures described above  
9 and substantially on the terms and conditions in the form of vertical disposition and  
10 development agreement in Board File No. \_\_\_\_\_ for this ordinance, subject to  
11 approval by the State Lands Commission of the Exchange Agreement and completion of the  
12 public trust exchange.

13 Section 5. Administrative Code Waivers.

14 The Board of Supervisors waives the application to the development of Parcel K North  
15 of the following provisions of the Administrative Code: (a) the Appraisal Review as defined in  
16 and required by Section 23.3 (Conveyance and Acquisition of Real Property);  
17 (b) Section 23A.7 (Transfer of Jurisdiction Over Surplus Properties to the Mayor's Office of  
18 Housing and Community Development); and (c) Section 61.5(c)(2) (Unacceptable Non-  
19 Maritime Land Uses Added through Waterfront Plan Process).

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

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

7 By: \_\_\_\_\_  
8 JOANNE SAKAI  
9 Deputy City Attorney

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