

1 [Planning, Administrative Codes - Development Agreement, Conditional Use Procedures for
2 Large Noncontiguous Post-Secondary Educational Institutions, Planning and Administrative
3 Code Waivers]

4 **Ordinance approving a Development Agreement between the City and County of San**
5 **Francisco and the Stephens Institute, dba Academy of Art University, and its affiliated**
6 **entities, as to the Academy’s properties, which agreement provides for various public**
7 **benefits, including among others an “affordable housing payment” of \$37,600,000 and**
8 **a payment of approximately \$8,200,000 to the City’s Small Sites Fund; amending the**
9 **Planning Code to provide review procedures for Large Noncontiguous Post-Secondary**
10 **Educational Institutions; waiving conflicting provisions in the Planning and**
11 **Administrative Codes, including Planning Code, Section 169; confirming compliance**
12 **with or waiving certain provisions of Administrative Code, Chapters 41 and 56; ratifying**
13 **certain actions taken in connection with the Development Agreement and authorizing**
14 **certain actions to be taken consistent with the Development Agreement, as defined**
15 **herein; affirming the Planning Department’s determination under the California**
16 **Environmental Quality Act, and findings of conformity with the General Plan, and with**
17 **the eight priority policies of Planning Code, Section 101.1(b); and adopting findings of**
18 **public convenience, necessity, and welfare under Planning Code, Section 302.**

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

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

25 Section 1. General Background and Findings.

1 (a) California Government Code Sections 65864 et seq. authorizes any city, county,
2 or city and county to enter into an agreement for the development of real property within the
3 jurisdiction of the city, county, or city and county.

4 (b) Chapter 56 of the San Francisco Administrative Code (“Chapter 56”) sets forth
5 certain procedures for the processing and approval of development agreements in the City
6 and County of San Francisco (the “City”).

7 (c) The Stephens Institute, dba Academy of Art University (“Stephens Institute”) is a
8 private for-profit postsecondary academic institution that currently occupies 40 buildings in the
9 City (predominantly in the northeast quadrant) for its educational programs, recreational
10 activities, and student housing. The buildings are owned or leased by the Stephens Institute
11 from affiliated entities (collectively, the “LLC Parties”). This ordinance sometimes refers to the
12 Stephens Institute and the LLC Parties, collectively and individually, as the “Academy.”

13 (d) In 2007, the Stephens Institute occupied 34 buildings. In 28 of those buildings,
14 the Academy had implemented various tenant improvements and changes of use without
15 benefit of required conditional uses, building permits, or other entitlements. To evaluate the
16 potential impacts associated with bringing these 28 buildings into compliance with the
17 Planning Code and to analyze the Academy’s then-proposed plans for growth, an
18 Environmental Impact Report (“EIR”) and an Existing Sites Technical Memorandum (“ESTM”)
19 were prepared between 2010 and 2016. During this period, one or more LLC Parties acquired
20 an additional six buildings beyond the 34 already occupied, bringing the total number of
21 properties owned or occupied by the Academy to 40. Collectively, the 40 properties described
22 in this paragraph are referred to as the “Academy Properties”; the Academy Properties are
23 more particularly described in the July 5, 2019 Academy of Art University Institutional Master
24 Plan, a copy of which is on file with the Planning Department in File No. 2019-012970IMP.
25 The Planning Commission approved the ESTM and certified the Final Environmental Impact

1 Report (“FEIR”), which analyzed the 40 properties, on July 28, 2016.

2 (e) On May 6, 2016, the City Attorney of the City and County of San Francisco (the
3 “City Attorney”), on behalf of the City and the People of the State of California, commenced
4 litigation against the Academy and certain LLC Parties in People v. Stephens Institute, et. al,
5 San Francisco Superior Court Number CGC-16-551832 (the “Lawsuit”). In the Lawsuit, the
6 City Attorney alleged violations of the City’s Administrative Code, Planning Code, Building
7 Code and the State Unfair Competition Law, California Business and Professions Code
8 Sections 17200 et seq. (the “UCL”).

9 (f) During court-supervised settlement discussions to resolve the Lawsuit, the
10 Academy expressed its commitment to bring its existing uses into compliance with the
11 Planning Code; relocate existing Academy uses or change Academy uses in buildings in
12 accordance with applicable laws in those instances where the Planning Department has
13 determined that legalization is not appropriate or the Academy has agreed to withdraw its use;
14 compensate the City for past violations, including providing affordable housing public benefits
15 to the City; and work cooperatively with the City in planning for future Stephens Institute
16 growth in a manner that accounts for the urban nature of the Stephens Institute campus,
17 without adversely impacting the City’s affordable or rent-controlled housing stock, or
18 burdening its transportation system, including, as a part of that plan, building new housing for
19 its students on property zoned for such use.

20 (g) As a result of those settlement discussions, and under the auspices of the
21 Superior Court, the Academy and the City (collectively “Parties”) entered into a non-binding
22 Term Sheet for Global Resolution, dated November 15, 2016 (the “Initial Term Sheet”), as
23 later supplemented by the Parties under the Superior Court’s supervision in the Supplement
24 to Term Sheet for Global Resolution, dated July 10, 2019 (the “Supplement”). This ordinance
25 refers to the Initial Term Sheet and the Supplement collectively as the “Term Sheet”. The

1 Term Sheet was intended to provide a basis to resolve all of the outstanding issues relating to
2 the Lawsuit with respect to land use matters, and to establish appropriate principles and
3 processes for land use compliance by the Academy. The Parties made the Term Sheet
4 public, each time with the Court's consent, and the Planning Commission held public hearings
5 relating to the matters addressed in the Term Sheet.

6 (h) As contemplated by the Term Sheet, the Parties will enter into a comprehensive
7 consent judgment that they will file with the Superior Court seeking the Court's approval and
8 entry of judgment (the "Consent Judgment"). The Consent Judgment contains four main parts:
9 (1) a Settlement Agreement (the "Settlement Agreement"), which is subject to approval by the
10 Board of Supervisors in the ordinance in File No. 191137 and includes obligations of the LLC
11 Parties to make payments to the City (including the Affordable Housing Public Benefit, defined
12 below); (2) a Stipulated Injunction (the "Injunction"), which is an exhibit to the Settlement
13 Agreement and provides a mechanism for judicial enforcement of the Academy's obligations
14 under the Settlement Agreement and the Development Agreement; and (3) the Development
15 Agreement, which is also an exhibit to the Settlement Agreement. Also critical to the global
16 resolution that the Consent Judgment would achieve is the instrument securing the LLC
17 Parties' financial obligations under the Settlement Agreement and the Development
18 Agreement. The obligations of the LLC Parties to make the full settlement payments under the
19 Settlement Agreement will be secured by a Guaranty (the "Guaranty") from the Stephens
20 Family Revocable Trust, the Elisa Stephens Revocable Trust, the Scott Alan Stephens
21 Revocable Trust, Elisa Stephens, Scott Alan Stephens, and Susanne Stephens.

22 (i) As contemplated by the Term Sheet, the Academy proposes to withdraw from,
23 and cease any Stephens Institute operations at nine of the 40 Academy Properties referenced
24 in subsection (d), to occupy three additional properties, and to bring all of the remaining 34
25 properties owned by the LLC Parties and used by the Stephens Institute or intended for future

1 Stephens Institute use into compliance with the Planning Code (“Project”). The Project
2 requires the City’s approval of a variety of permits and authorizations, including: (1) approval
3 of a conditional use authorization by the Planning Commission to reflect the approval of the
4 use of 34 properties (primarily in the northeast quadrant of the City) and to grant certain
5 exceptions to the Planning Code, (2) the approval of permits to alter and certificates of
6 appropriateness by the Historic Preservation Commission, (3) amendment of the Planning
7 Code to permit uses that are currently not permitted at certain properties, and (4) building
8 permits and associated approvals from other City departments for a variety of other building
9 alterations and street improvements including without limitation the removal and installation of
10 signage, the removal and repair of nonconforming awnings and exterior alterations, the
11 installation of Class 1 and Class 2 bike racks, the removal of curb cuts, and the replacement
12 of certain windows.

13 (j) The Stephens Institute filed an application with the Planning Department for
14 approval of a development agreement relating to the Project (the “Development Agreement”)
15 under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board
16 of Supervisors in File No. 191125.

17 (k) As set forth in the Development Agreement, the Academy requests legalization
18 of certain previously unpermitted alterations and changes in use at the Academy Properties.
19 The Academy also seeks approval of the work necessary to correct or reverse other
20 previously unpermitted alterations and changes, and to bring these properties into compliance
21 with the Planning Code including, where applicable, Planning Code Articles 10 and 11.

22 (l) The Development Agreement requires the Academy to obtain all necessary
23 permits to perform corrective work at the 34 properties referenced in subsection (i) and
24 complete all work necessary to bring these buildings into compliance with the Planning Code
25 pursuant to the Schedule of Performance Schedule set forth as Exhibit E to the Development

1 Agreement.

2 (m) While the Development Agreement is between the City, acting primarily through
3 the Planning Department, and the Academy, other City agencies retain a role in reviewing and
4 issuing certain later approvals for the Project, including approval of building permits. All
5 affected City agencies have consented to or will consent to the Development Agreement.

6 (n) Concurrently with this ordinance, the Board is taking a number of actions in
7 furtherance of the Project, including approval of a Settlement Agreement, Consent Judgment,
8 Stipulated Injunction and Guaranty, and other approvals as generally described in the
9 Development Agreement, including Exhibit D to the Development Agreement (the
10 “Approvals”).

11 (o) Public benefits to the City from the Project include: (1) an “Affordable Housing
12 Benefit” defined as the cash payment by the LLC Parties of \$37,600,000 to the City to be
13 used by the City solely for affordable housing purposes, with a first priority for uses related to
14 the creation or preservation of single room occupancy (SRO) units in those supervisorial
15 districts in which the City alleges the Academy unlawfully converted SRO buildings to student
16 housing, in such manner as the City, acting by and through the Mayor’s Office of Housing and
17 Community Development, may determine in its sole discretion; (2) a cash payment by the LLC
18 Parties to the City’s Small Sites Fund approximately \$8,200,000; (3); an agreement by the
19 Stephens Institute to meet all future housing needs for its students through new construction
20 on property that is zoned for such use, or conversion of existing non-residential, non-PDR (not
21 zoned or operated as production, distribution and repair businesses) structures to student
22 housing use, to not promise new students more housing units than the number of lawful units
23 that are at its disposal, to not temporarily house its students in non-Academy facilities with
24 limited exceptions, and to provide housing to increase the percentage of housing it provides to
25 On Campus Students (defined as on-site, full-time undergraduate and graduate students

1 taking no more than one course online per semester) pursuant to a “Housing Metering”
2 formula agreed to by the Parties; (4) payment by the LLC Parties to the Planning Department
3 of Planning Code penalties totaling \$1,000,000; and (5) payment by the LLC Parties to the
4 City Attorney’s Office of Unfair Competition Law penalties totaling \$6,000,000. In addition, the
5 Academy will pay impact, fair share, and in lieu fees totaling in excess of \$3,500,000. The
6 total of all payments detailed in this subsection (o) will exceed \$58,000,000. Further, the
7 Academy will pay permit fees and the City’s administrative costs in connection with the
8 processing of the Development Agreement.

9 Section 2: Environmental Findings.

10 (a) On July 28, 2016, by Motion No. 19704, the Planning Commission certified as
11 adequate, accurate, and complete the FEIR for the Project pursuant to the California
12 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.)
13 (“CEQA”). A copy of Planning Commission Motion No. 19704 is on file with the Clerk of the
14 Board of Supervisors in File No. 191125.

15 (b) On October 9, 2019, the Planning Department issued an Addendum to the FEIR
16 (“Addendum”), in which it determined that the actions contemplated in this ordinance comply
17 with CEQA. The Addendum is on file with the Clerk of the Board of Supervisors in File No.
18 191125 and is incorporated herein by reference. The Board affirms this determination.

19 (c) On November 20, 2019, by Resolution No. 1106, the Historic Preservation
20 Commission adopted CEQA findings; on November 21, 2019, by Motion No. 20572, the
21 Planning Commission adopted findings (the “CEQA Findings”). These motions are on file with
22 the Clerk of the Board of Supervisors in File No. 191125. In accordance with the actions
23 contemplated in this ordinance, the Board has reviewed the FEIR, the Addendum, and related
24 documents, and adopts as its own and incorporates by reference as though fully set forth
25

1 herein the CEQA Findings, including the statement of overriding considerations, and the
2 MMRP.

3 Section 3. Planning Code Findings.

4 (a) On November 21, 2019, the Planning Commission, in Resolution No.
5 20573, adopted findings that the actions contemplated in this ordinance are consistent,
6 on balance, with the City’s General Plan and eight priority policies of Planning Code Section
7 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with
8 the Clerk of the Board of Supervisors in File No. 191125, and is incorporated herein by
9 reference.

10 (b) Pursuant to Planning Code Section 302, the Board finds that these Planning
11 Code amendments will serve the public necessity, convenience, and welfare for the reasons
12 set forth in Planning Commission Resolution No. 20573, and the Board incorporates such
13 reasons herein by reference. A copy of said Resolution is on file with the Board of
14 Supervisors in File No. 191125.

15 Section 4. Article 3 of the Planning Code is hereby amended by adding Sections 304.6
16 and 304.7, to read as follows:

17 **SEC. 304.6. REVIEW PROCEDURES FOR LARGE NONCONTIGUOUS POST-**
18 **SECONDARY EDUCATIONAL INSTITUTIONS.**

19 **(a) Intent.** *This Section 304.6 establishes a comprehensive and consolidated public review*
20 *process through which the Planning Commission shall review proposals involving Post-Secondary*
21 *Educational Institutions that meet prescribed criteria and would otherwise be subject to multiple*
22 *approval processes and hearings.*

23 **(b) Applicability.** *This Section 304.6 applies to all properties owned, occupied, or operated, in*
24 *any capacity, by a Large Noncontiguous Post-Secondary Educational Institution. For purposes of this*
25 *Section, a Large Noncontiguous Post-Secondary Educational Institution is an organization or entity*

1 that, regardless of certification by the Western Association of Schools and Colleges or primary course
2 of study, meets all other requirements for a Post-Secondary Educational Institution, and satisfies all of
3 the following conditions:

4 _____ (1) is subject to the Institutional Master Plan requirements of Section 304.5 of this
5 Code;

6 _____ (2) is a for-profit institution; and

7 _____ (3) owns, occupies, or operates, in any capacity, 10 or more properties that are located
8 in three or more non-overlapping Clusters anywhere in the City. For purposes of this subsection (b)(3),
9 a Cluster is a circular area with a ¼-mile diameter that encompasses one or more properties. Clusters
10 shall be drawn so that the fewest number of Clusters are required to encompass all such properties,
11 without any one Cluster overlapping with any other.

12 **(c) Master Conditional Use Authorization.** Any number of individual Conditional Use
13 Authorizations or building permits sought by a Large Noncontiguous Post-Secondary Educational
14 Institution under this Section 304.6 may be sought under a single application for Conditional Use
15 Authorization, also referred to as a “Master Conditional Use Authorization,” and may be acted on in a
16 single action of the Planning Commission, regardless of the number of distinct properties involved.
17 Determination on such Master Conditional Use Authorization shall be made pursuant to the criteria in
18 Section 303(c) of this Code. In considering such Master Conditional Use Authorization, the
19 Commission may consider such exceptions to the Planning Code as may be necessary to implement the
20 Master Conditional Use Authorization.

21 **(d) Master Certificate of Appropriateness.** Any number of individual Certificates of
22 Appropriateness may be sought by a Large Noncontiguous Post-Secondary Educational Institution
23 under a single application for a Certificate of Appropriateness, also referred to as a “Master
24 Certificate of Appropriateness,” and acted on by single action of the Historic Preservation
25 Commission, regardless of the number of distinct properties involved. Determination on such Master

1 Certificate of Appropriateness shall be made as set forth in Section 1006.6 of this Code and in other
2 provisions of the Municipal Code, as applicable. Additionally, no application made under this Section
3 304.6 shall be considered a Minor Alteration under Section 1006.2 of this Code.

4 (e) **Master Permit to Alter.** Any number of individual Permits to Alter may be sought by a
5 Large Noncontiguous Post-Secondary Educational Institution under a single application for a Permit
6 to Alter, also referred to as a “Master Permit to Alter,” and acted on by single action of the Historic
7 Preservation Commission, regardless of the number of distinct properties involved. Determination on
8 such Master Permit to Alter shall be made as set forth in Section 1111 of this Code and in other
9 provisions of the Municipal Code, as applicable. Additionally, no application made under this Section
10 304.6 shall be considered a Minor Alteration under Section 1111.1 of this Code.

11 (f) **No Discretionary Review.** No requests for Discretionary Review shall be accepted by the
12 Planning Department or heard by the Planning Commission for any permits or other applications
13 subject to this Section 304.6(c).

14 (g) **Sunset.** This Section 304.6 shall remain in effect until the later of: (1) the date on which all
15 work has been completed as required pursuant to the Schedule of Performance (Exhibit E) of the
16 Development Agreement by and among the City and County of San Francisco and the Stephens
17 Institute, dba Academy of Art University and the LLC Parties, and (2) January 1, 2025.

18 **SEC. 304.7. ADDITIONAL PROVISIONS APPLICABLE TO LARGE**
19 **NONCONTIGUOUS POST-SECONDARY EDUCATIONAL INSTITUTIONS.**

20 In cases where the City enters into a Development Agreement with a Large Noncontiguous
21 University, all of the following additional provisions apply:

22 (a) where such Development Agreement provides the City compensation for the loss of specific
23 Residential Units that are not Student Housing units, the restrictions of Section 317(e) of this Code may
24 be waived through a Master Conditional Use Authorization under Section 304.6;

25 (b) where such Development Agreement authorizes the conversion of no more than one property

1 from an industrial use subject to Section 202.8 of this Code to an Institutional Use, the Conditional Use
2 Authorization requirements and other restrictions of Section 202.8 shall be met by application for a
3 Master Conditional Use Authorization under Section 304.6; and

4 (c) where such Development Agreement would expand the number of guest rooms subject to the
5 provisions of Chapter 41 of the Administrative Code, the density limitations of Article 2 of this Code
6 shall not apply to the property with the expanded number of guestrooms.

7 Section 5. Development Agreement.

8 (a) The Board of Supervisors approves all of the terms and conditions of the
9 Development Agreement, in substantially the form on file with the Clerk of the Board of
10 Supervisors in File No. 191125.

11 (b) The Board of Supervisors approves and authorizes the execution, delivery and
12 performance by the City of the Development Agreement as follows: (1) the Director of
13 Planning is authorized to execute and deliver the Development Agreement, and (2) the
14 Director of Planning and other applicable City officials are authorized to take all actions
15 reasonably necessary or prudent to perform the City's obligations under the Development
16 Agreement in accordance with the terms of the Development Agreement.

17 (c) The Director of Planning, at the Director's discretion and in consultation with the
18 City Attorney, is authorized to enter into any additions, amendments, or other modifications to
19 the Development Agreement that the Director of Planning determines are in the best interests
20 of the City and that do not materially increase the obligations or liabilities of the City or
21 materially decrease the benefits to the City as provided in the Development Agreement.

22 (d) The approval of the Development Agreement under this ordinance is contingent
23 on the Board of Supervisors' approval of the companion ordinance approving the Settlement
24 Agreement, in Board of Supervisors File No. 191137.

25 ///

1 Section 6. Board Authorization and Appropriation; Waiver/Override of Municipal Code
2 Provisions.

3 (a) By approving the Development Agreement, the Board of Supervisors authorizes
4 the Controller and City Departments to accept the funds paid by the Academy as set forth
5 therein, and to appropriate and use the funds for the purposes described therein. The Board
6 expressly approves the use of the Impact Fees as described and set forth in the Development
7 Agreement.

8 (b) The Board of Supervisors waives or overrides any provision in Article 4 of the
9 Planning Code and Chapter 10 of the Administrative Code that would conflict with the uses of
10 these funds as described in the Development Agreement.

11 Section 7. Administrative Code Conformity and Waivers.

12 In connection with the Development Agreement, the Board of Supervisors finds that the
13 City has substantially complied with the requirements of Administrative Code Chapters 41 and
14 56, and waives any requirement to the extent not strictly followed. The Development
15 Agreement shall prevail in the event of any conflict between the Development Agreement and
16 Administrative Code Chapters 41 and 56, and without limiting the generality of the foregoing,
17 the following provisions of Administrative Code Chapter 56 are waived or deemed satisfied as
18 follows:

19 (a) The Project comprises 43 discrete properties located throughout the City and is
20 the type of large multi-phase and/or mixed-use development contemplated by the
21 Administrative Code and therefore satisfies the provisions of Chapter 56, Section 56.3(g).

22 (b) Any provisions of the Development Agreement that conflict with the provisions of
23 Administrative Code Chapter 56 shall apply.

24 (c) The provisions of the Development Agreement regarding any amendment or
25 termination, including those relating to “Material Change,” shall apply in lieu of the provisions

1 of Chapter 56, Sections 56.15 and Section 56.18.

2 (d) The provisions of Chapter 56, Section 56.20 have been satisfied by agreement
3 set forth in the Settlement Agreement and Development Agreement for the reimbursement of
4 City costs.

5 (e) The Board of Supervisors waives the applicability of Section 56.4 (“Application,
6 Forms, Initial Notice, Hearing”) and Section 56.10 (“Negotiation Report and Documents”).

7 (f) The Board of Supervisors waives the applicability of Section 56.3(b)
8 (“Applicant/Developer”).

9 Section 8. Planning Code Waivers.

10 (a) The Board of Supervisors finds that the Impact Fees due under the
11 Development Agreement will provide greater benefits to the City than the impact fees and
12 exactions under Planning Code Article 4 and waives the application of, and to the extent
13 applicable exempts the Project from, impact fees and exactions under Planning Code Article 4
14 on the condition that Developer pays the Impact Fees due under the Development
15 Agreement.

16 (b) The Board of Supervisors finds that the Transportation Management Plan
17 (“TMP”) attached as Exhibit H to the Term Sheet includes provisions requiring that the
18 Academy develop, implement, and provide a shuttle management plan, and provide bicycle
19 parking, and other provisions that meet the goals of the City’s Transportation Demand
20 Management Program in Planning Code Section 169, and waives the application of
21 Section 169 to the Project on the condition that the Academy implements and complies with
22 the TMP.

23 Section 9. Ratification.

24 All actions taken by City officials in preparing and submitting the Development
25 Agreement to the Board of Supervisors for review and consideration are hereby ratified and

1 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
2 by City officials consistent with this ordinance.

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

7 Section 11. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
9 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
10 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
11 additions, and Board amendment deletions in accordance with the “Note” that appears under
12 the official title of the ordinance.

13
14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 KRISTEN A. JENSEN
19 Deputy City Attorney

20 n:\legana\as2019\2000164\01404439.docx