

1 [Development Agreement - Seawall Lot 337 Associates, LLC - Seawall Lot 337 - Mission
2 Rock Project]

3 **Ordinance approving a Development Agreement between the City and County of San**
4 **Francisco and Seawall Lot 337 Associates, LLC, for 28 acres of real property known as**
5 **Seawall Lot 337, located east of Third Street between China Basin Channel and Mission**
6 **Rock Street, China Basin Park and the portion of Terry A. Francois Boulevard abutting**
7 **the park, Pier 48, the marginal wharf between Pier 48 and Pier 50, and Parcel P20; for**
8 **the proposed Mission Rock Mixed-Use Project; waiving certain provisions of the**
9 **Administrative Code, Planning Code, and Subdivision Code; and adopting findings**
10 **under the California Environmental Quality Act, public trust findings, and findings of**
11 **consistency with the General Plan, and the eight priority policies of Planning Code,**
12 **Section 101.1(b).**

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

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

21 Section 1. Background and Findings.

22 (a) California Government Code Sections 65864 et seq. ("Development Agreement
23 Law") authorize any city, county, or city and county to enter into an agreement for the
24 development of real property within its jurisdiction.

25 (b) Chapter 56 of the Administrative Code sets forth certain procedures for
processing and approving development agreements in the City and County of San Francisco
(the "City").

1 (c) In May 2010, the Port Commission (the "Port") selected SWL 337 Associates,
2 LLC, a Delaware limited liability company ("Developer"), through a competitive process to
3 negotiate exclusively for the mixed-use development (the "Project") of Seawall Lot 337,
4 bounded by Third Street on the west, Parcel P20 and Mission Rock Street on the south,
5 Pier 48 to the east, and China Basin Park on the north, and Pier 48. The Port Commission
6 later added China Basin Park, the marginal wharf between Pier 48 and Pier 50, and
7 Parcel P20 to the development site (collectively, the "Site"), subject to approvals necessary to
8 remove Parcel P20 from the Mission Bay South Redevelopment Project Area. Developer, an
9 affiliate of the San Francisco Giants, will act as the master developer for the Project.

10 (d) In conjunction with this ordinance, this Board has taken or intends to take a
11 number of other actions in furtherance of the Project, including approval of: (1) a disposition
12 and development agreement ("DDA") between Developer and the Port; (2) amendments to
13 the Planning Code that create the Mission Rock Special Use District (the "SUD amendments")
14 and incorporate the more detailed Mission Rock Design Controls; (3) amendments to the
15 Zoning Maps; (4) a memorandum of understanding for interagency cooperation between the
16 Port and other City agencies (the "ICA") with respect to the subdivision of the Site and
17 construction of public infrastructure and other public facilities; (5) formation proceedings for
18 financing districts covering the Site and a memorandum of understanding between the Port
19 and the Treasurer and Tax Collector and the Controller regarding the assessment, collection,
20 and allocation of ad valorem and special taxes to the financing districts; and (6) a number of
21 related documents and entitlements to govern the Project.

22 (e) At full build-out, the Project will include: (1) 1.1 million to 1.6 million gross square
23 feet ("gsf") of new residential uses (an estimated 1,000 to 1,950 new residential units), at least
24 40% of which will be on-site housing affordable to a range of low- to moderate-income
25 households as described in the Housing Plan in the DDA; (2) 972,000 to 1.4 million gsf of new

1 commercial and office space; (3) 241,000 to 244,800 gsf of active retail and production uses
2 on 11 proposed development blocks on SWL 337 in buildings that would range in height from
3 90 to 240 feet, consistent with Section 5 of the Mission Rock Affordable Housing, Parks, Jobs
4 and Historic Preservation Initiative (Proposition D, November 2015); (4) rehabilitation and
5 reuse of Pier 48, a significant contributing resource to the Port of San Francisco Embarcadero
6 Historic District; (5) approximately 1.1 million gsf of above- and below-grade parking in one or
7 two garages; (6) transportation demand management on-site and payment of impact fees that
8 the Municipal Transportation Agency will use to improve transportation service in the area;
9 (7) approximately 5.4 acres of net new open space for a total of approximately 8 acres of new
10 and expanded open space, including an expansion of China Basin Park, a new central
11 Mission Rock Square, and waterfront access along the shoreline; (8) public access areas,
12 assembly areas, and an internal grid of public streets, shared streets, and utilities
13 infrastructure; and (9) on-site strategies to protect against sea level rise.

14 (f) While the DDA binds the Port and Developer, other City agencies retain a role in
15 reviewing and issuing certain later approvals for the Project. Later approvals include approval
16 of subdivision maps and plans for public infrastructure and public facilities, design review and
17 approval of new buildings under the SUD amendments, and acceptance of Developer's
18 dedications of public infrastructure and public facilities for maintenance and liability under the
19 Subdivision Code. Accordingly, the City and Developer negotiated a development agreement
20 for the Project (the "Development Agreement"), a copy of which is in Board File No. 171313
21 and incorporated in this ordinance by reference. The DDA, the Development Agreement, the
22 ICA, the Tax MOU, and all vertical disposition and development agreements and leases that
23 the Port enters into in accordance with the DDA are referred to collectively as the "Transaction
24 Documents."
25

1 (g) Development of the Site in accordance with the DDA and the Development
2 Agreement will help realize and further the City's goals to restore and revitalize Seawall
3 Lot 337 and Pier 48, increase public access to the waterfront, increase public open space and
4 community facilities within the neighborhood, add to the City's affordable and market-rate
5 housing stock, and create a significant number of construction and permanent jobs in and
6 near the Site. In addition, the Project will provide additional benefits to the public that could
7 not be obtained through application of existing City ordinances, regulations, and policies.

8 Section 2. Environmental Findings.

9 (a) The Planning Commission has determined that the actions contemplated in this
10 ordinance comply with the California Environmental Quality Act (Cal. Pub. Res. Code
11 §§ 21000 et seq.) ("CEQA"). A copy of this determination is in Board File No. 171313 and
12 incorporated in this ordinance by reference.

13 (b) The Board of Supervisors has adopted Resolution No. 36-18, a copy of which is
14 in Board File No. 171286, making CEQA findings for the Project. The Board of Supervisors
15 adopts and incorporates in this ordinance by reference the Planning Commission's findings
16 under CEQA.

17 Section 3. Consistency Findings.

18 The Planning Commission recommended that the Board of Supervisors approve the
19 Development Agreement and amendments to the Planning Code and the Zoning Maps at a
20 public hearing on October 5, 2017, by Motion No. 20019 and Resolution No. 20020, copies of
21 which are in Board File No. 171313. This Board adopts and incorporates by reference in this
22 ordinance the Planning Commission's findings of consistency with the General Plan and the
23 eight priority policies of Planning Code Section 101.1(b).

24 Section 4. Public Trust Findings.
25

1 At a public hearing on January 30, 2018, the Port Commission consented to the
2 Development Agreement and approved the DDA, subject to the Board of Supervisors'
3 approval, finding that the Project would be consistent with and further the purposes of the
4 common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333), as
5 amended by Senate Bill 815 (Stats. 2007, ch. 660) and Assembly Bill 2797 (Stats. 2016,
6 ch. 529), by Resolution Nos. 18-03 and 18-06, copies of which are in Board File No. 171313.
7 The Board of Supervisors adopts and incorporates in this ordinance by reference the Port
8 Commission's public trust findings.

9 Section 5. Approval of Development Agreement.

10 The Board of Supervisors:

- 11 (a) approves all of the terms and conditions of the Development Agreement in
12 substantially the form in Board File No. 171313;
- 13 (b) finds that the Development Agreement substantially complies with the
14 requirements of Administrative Code Chapter 56 (Development Agreements);
- 15 (c) finds that the Project is a large multi-phase and/or mixed-use development as
16 defined in Administrative Code Section 56.3(g); and
- 17 (d) approves the Workforce Development Plan attached to the DDA in lieu of
18 requirements under Administrative Code Chapter 14B (Local Business Enterprise Utilization
19 and Non-Discrimination in Contracting Ordinance), Article VII of Chapter 23 (Prevailing Wage,
20 Apprenticeship, and Local Hire Requirements in City Real Property Sales Contracts and
21 Leases), Section 56.7(c) (Nondiscrimination/Affirmative Action Requirements), and
22 Chapter 83 (First Source Hiring Program) to the extent that they apply to construction work
23 that is subject to the Local Hiring Requirements of the Workforce Development Plan.
24
25

1 Section 6. Administrative Code Chapter 56 Waivers.

2 The Board of Supervisors waives the application to the Project of the following
3 provisions of Administrative Code Chapter 56 to the extent inconsistent with the Development
4 Agreement, the DDA, or the ICA, specifically:

5 (a) Section 56.4 (Application, Forms, Initial Notice, Hearing); Section 56.7(c)
6 (Nondiscrimination/Affirmative Action Requirements); Section 56.8 (Notice); Section 56.10
7 (Negotiation Report and Documents); Section 56.15 (Amendment and Termination);
8 Section 56.17(a) (Annual Review); Section 56.18 (Modification or Termination); and
9 Section 56.20 (Fee); and

10 (b) any other procedural or other requirements if and to the extent that they are not
11 strictly followed.

12 Section 7. Other Administrative Code Waivers.

13 The Board of Supervisors waives the application to the Project of the following
14 additional provisions of the Administrative Code:

15 (a) Chapter 6 (Public Works Contracting Policies and Procedures) other than the
16 payment of prevailing wages when required;

17 (b) remedies and penalties for noncompliance with Chapter 12Q (Health Care
18 Accountability), Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History
19 in Hiring and Employment Decisions), or Section 4.9-1 (Nutritional Standards for Vending
20 Machines; Nutritional Guidelines for Food Served at City Meetings and Events;
21 Recommended Nutritional Guidelines for Restaurants on City Property) that could result in the
22 termination of any Transaction Document, loss or impairment of Developer's rights under the
23 Transaction Documents or a vertical developer's rights under a property contract for any part
24 of the Site, or debarment of Developer or any vertical developer from future contract
25 opportunities with the City;

1 (c) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in
2 Contracting Ordinance);

3 (d) Competitive Bidding Procedures and Appraisal Review as defined in
4 Section 23.2 (Chapter Definitions) and required by Section 23.3 (Conveyance and Acquisition
5 of Real Property) or Section 23.33 (Competitive Bidding Procedures);

6 (e) Section 23.31 (Year-to-Year or Shorter Leases), which limits the Director of
7 Property's authority to enter into leases on behalf of the City as landlord for periods longer
8 than one year;

9 (f) Chapter 23A.7 (Surplus Public Lands Ordinance);

10 (g) Paragraph (2) of Section 61.5(c) (Listing of Unacceptable Non-Maritime Land
11 Uses); and

12 (h) solely to the extent inconsistent with Developer's approved Workforce
13 Development Program, Chapter 82 (Local Hiring Policy for Construction) and Chapter 83
14 (First Source Hiring Program).

15 Section 8. Subdivision Code Waivers.

16 (a) The Board of Supervisors waives the application to the Project of time limits
17 under Subdivision Code Section 1346(e) (Improvement Plans) and Section 1355 (Time Limit
18 for Submittal) to the extent that they conflict with the ICA or the Development Agreement.

19 (b) The Board of Supervisors also waives the application to the Project of
20 Subdivision Code Section 1348 (Failure To Complete Improvements Within Agreed Time),
21 and the following terms shall apply in lieu thereof: The Public Improvement Agreement, as
22 defined in the ICA, shall include provisions consistent with the Transaction Documents and
23 the applicable requirements of the Municipal Code and the Subdivision Regulations regarding
24 extensions of time and remedies that apply when improvements are not completed within the
25 agreed time.

1 Section 9. Authorization.

2 (a) The Board of Supervisors affirms that the waivers in this ordinance do not waive
3 requirements under the Development Agreement Law and authorizes the City to execute,
4 deliver, and perform the Development Agreement as follows:

5 (1) the Director of Planning, the City Administrator, and the Director of Public
6 Works are authorized to execute and deliver the Development Agreement with signed
7 consents of the Port Commission, the Municipal Transportation Agency, and the San
8 Francisco Public Utilities Commission; and

9 (2) the Director of Planning and other appropriate City officials are authorized
10 to take all actions reasonably necessary or prudent to perform the City's obligations under the
11 Development Agreement in accordance with its terms.

12 (b) The Director of Planning is authorized to exercise discretion, in consultation with
13 the City Attorney, to enter into any additions, amendments, or other modifications to the
14 Development Agreement that the Director of Planning determines are in the best interests of
15 the City and that do not materially increase the obligations or liabilities of the City or materially
16 decrease the benefits to the City as provided in the Development Agreement. Final versions
17 of any additions, amendments, or other modifications to the Development Agreement shall be
18 provided to the Clerk of the Board of Supervisors for inclusion in Board File No. 171313
19 within 30 days after execution by all parties.

20 Section 10. Ratification of Past Actions; Authorization of Future Actions.

21 All actions taken by City officials in preparing and submitting the Development
22 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
23 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
24 by City officials consistent with this ordinance.
25

1 Section 11. Effective and Operative Dates.

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

6 (b) This ordinance shall become operative only on the effective date of the DDA. No
7 rights or duties are created under the Development Agreement until the operative date of this
8 ordinance.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By: 
14 JOANNE SAKAI
Deputy City Attorney

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City and County of San Francisco

Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 171313

Date Passed: February 27, 2018

Ordinance approving a Development Agreement between the City and County of San Francisco and Seawall Lot 337 Associates, LLC, for 28 acres of real property known as Seawall Lot 337, located east of Third Street between China Basin Channel and Mission Rock Street, China Basin Park and the portion of Terry A. Francois Boulevard abutting the park, Pier 48, the marginal wharf between Pier 48 and Pier 50, and Parcel P20; for the proposed Mission Rock Mixed-Use Project; waiving certain provisions of the Administrative Code, Planning Code, and Subdivision Code; and adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b).

February 07, 2018 Government Audit and Oversight Committee - RECOMMENDED

February 13, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Breed, Fewer, Kim, Peskin, Ronen, Sheehy, Stefani, Tang and Yee

Excused: 2 - Cohen and Safai

February 27, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Breed, Cohen, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Stefani and Yee

Excused: 1 - Tang

File No. 171313

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/27/2018 by the Board of Supervisors of the City and County of San Francisco.

Handwritten signature of Angela Calvillo
Angela Calvillo
Clerk of the Board

Handwritten signature of Mark E. Farrell
Mark E. Farrell
Mayor

3/6/18
Date Approved