[Development Agreement - California Barrel Company LLC - Potrero Power Station Mixed-Use Project]

Ordinance approving a Development Agreement between the City and County of San Francisco and California Barrel Company LLC, a California limited liability company, for the Potrero Power Station Mixed-Use Project at the approximately 29-acre site generally bounded by 22nd Street to the north, the San Francisco Bay to the east, 23rd Street to the south, and Illinois Street to the west, in the southeast part of San Francisco, with various public benefits, including 30% affordable housing and approximately 6.9 acres of publicly-accessible parks and open space; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); making public trust findings in accordance with the approval of a ground lease of Port-owned land; approving specific development impact fees and waiving any conflicting provisions in Planning Code, Article 4, or Administrative Code, Article 10; confirming compliance with or waiving certain provisions of Administrative Code, Chapters 14B, 23, 56, 82, and 99, Planning Code, Sections 169 and 138.1, Public Works Code, Section 806(d), and Subdivision Code, Section 1348; and ratifying certain actions taken in connection therewith, as defined herein.

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 the jurisdiction of the city, county, or city and county.

(b) Pursuant to California Government Code Section 65865, Chapter 56 of the San Francisco Administrative Code ("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) California Barrel Company LLC, a California limited liability company ("Developer") owns approximately 21.0 acres of developed and undeveloped land located in the City that is generally bound by 22nd Street to the north, the San Francisco Bay to the east, 23rd Street to the south and Illinois Street to the west, as more particularly described on Exhibit A-1 to the Development Agreement (the "Developer Property"). Existing structures on the Developer Property consist primarily of vacant buildings and facilities associated with the former power station use of the Developer Property.

(d) Pacific Gas & Electric Company, a California corporation ("PG&E"), owns approximately 4.8 acres of land located in the City that is adjacent to the Developer Property, as more particularly described on Exhibit A-2 to the Development Agreement (the "PG&E Sub-Area").

(e) The City, through the Port of San Francisco (the "Port"), owns approximately 2.9 acres of land located in the City that is comprised of the following three noncontiguous sites in the vicinity of the Developer Property (collectively, the "Port Sub-Area"): (i) approximately 1.5 acres of land located between the Developer Property and the San Francisco Bay, as more particularly described on Exhibit A-3 to the Development Agreement (the "Port Open Space");

(ii) approximately 1.3 acres of land located along 23rd Street between the Developer Property and Illinois Street, as more particularly described on Exhibit A-4 to the Development Agreement (the "Port 23rd St. Property"); and (iii) less than 0.1 acres of land located near the northeast corner of the Developer Property and adjacent to the San Francisco Bay, as more particularly described on Exhibit A-5 to the Development Agreement (the "Port Bay Property"). Developer and the Port intend to enter into a ground lease on or about the Reference Date set forth in the Development Agreement (the "Port Lease") for the Port Open Space and the Port Bay Property in order to allow Developer to occupy and develop the Port Open Space and the Port Bay Property and include the same in the Waterfront Park (as defined in the Development Agreement). The Port 23rd St. Property will be subject to a license allowing Developer to construct Public Improvements, as more particularly described therein.

(f) The City also owns less than 0.1 acres of land located in the City that is between the Developer Property and the Port 23rd Street Property, as more particularly described on Exhibit A-7 to the Development Agreement (the "City Sub-Area" and, collectively with the Developer Property, the Port Sub-Area, and the PG&E Sub-Area, the "Project Site").

(g) On January 3, 2020, Developer filed an application with the City's Planning Department for approval of a development agreement relating to the Project Site (the "Development Agreement") under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board in File No. 200040. Developer also filed applications with the Department for certain activities described in Exhibit B to the Development Agreement (collectively, the "Project").

(h) While the Development Agreement is between the City, acting primarily through the Planning Department, and Developer, other City agencies retain a role in reviewing and issuing certain later approvals for the Project. Later approvals include all approvals required

under the Project SUD or as otherwise set forth in the Municipal Code, Design Review Applications or Development Phase Applications, demolition permits, grading permits, site permits, building permits, sewer and water connection permits, major and minor encroachment permits, sidewalk modification legislation, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, street dedication approvals and ordinances, public utility easement vacation approvals and ordinances, public improvement agreements, subdivision maps, improvement plans, lot mergers, lot line adjustments and re-subdivisions and any amendment to the foregoing or to any Initial Approval. As a result, affected City agencies have consented to the Development Agreement.

(i) The Project is a phased, mixed use development on the Project Site that will include up to approximately 2,601 dwelling units, 1.5 million gross square feet (gsf) of office and/or life science / laboratory use, 241,574 gsf of hotel (250 rooms), 50,000 gsf of community facilities, 35,000 gsf PDR, 25,000 gsf assembly space, 99,464 gsf of retail, 1,862 bicycle parking spaces, 2,686 parking spaces and the development and improvement of 6.9 acres of publicly accessible open space, in addition to new streets, sidewalks, and bicycle lanes throughout the site, all as more particularly described in the Development Agreement.

(j) The Project is anticipated to generate an annual average of approximately 230 construction jobs during construction and, upon completion, approximately 5,211 net new permanent on-site jobs, and an approximately $24 million annual increase in general fund revenues to the City. In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City from the Project, the City has determined that development of the Project under the Development Agreement will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies. Additional public benefits to the City from the Project include: (i) affordable housing contributions in amounts that exceed the amounts required pursuant to existing City

ordinances, regulations and policies and that are intended to constitute thirty percent (30%) of the total number of housing units for the Project; (ii) workforce obligations, including significant training, employment and economic development opportunities, related to the development and operation of the Project; (iii) construction and maintenance of publicly accessible open space, totaling approximately 6.9 acres, including (a) a series of contiguous, integrated waterfront parks, including extension of the Blue Greenway and Bay Trail and creation of a 3.6-acre Waterfront Park, (b) a 1.2-acre central green space in the interior of the Project Site, (c) a 0.7-acre plaza type open space and (d) a publicly accessible soccer field; (iv) delivery of child care spaces totaling not less than 12,000 gross square feet; (v) sea level rise improvements as part of the development of the Project; and (vi) a design of the Project prioritizing and promoting travel by walking, biking and transit for new residents, tenants, employees and visitors; all as further described in the Development Agreement. The Development Agreement will eliminate uncertainty in the City's land use planning for the Project Site and secure orderly development.

(k) Concurrently with this Ordinance, the Board is taking a number of actions in furtherance of the Project, as generally described in the Development Agreement, including Exhibit B to the Development Agreement (the "Initial Approvals").

Section 2. CEQA Findings. On January 30, 2020, by Motion No. 20635, the Planning Commission certified as adequate, accurate and complete the Final Environmental Impact Report ("FEIR") for the Project pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"). A copy of Planning Commission Motion No. is on file with the Clerk of the Board of Supervisors in File No. 200040. Also, on January 30, 2020, by Motion No. 20635, the Planning Commission adopted findings, including a rejection of alternatives and a statement of overriding considerations (the "CEQA Findings") and a Mitigation Monitoring and Reporting Program ("MMRP"). These Motions are on file with

the Clerk of the Board of Supervisors in File No. 200040. In accordance with the actions contemplated herein, this Board has reviewed the FEIR and related documents, and adopts as its own and incorporates by reference as though fully set forth herein the CEQA Findings, including the statement of overriding considerations, and the MMRP.

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

(a) The Board of Supervisors shall consider companion legislation that adopts public necessity findings of Planning Code Section 302 and General Plan amendments. A copy of the companion legislation is on file with the Clerk of the Board of Supervisors in File No. 200039 and is incorporated herein by reference.

(b) For purposes of this Ordinance, the Board of Supervisors finds that the Development Agreement will serve the public necessity, convenience and general welfare for the reasons set forth in the companion legislation identified in subsection (a).

(c) For purposes of this Ordinance, the Board of Supervisors finds that the Development Agreement is in conformity with the General Plan, as proposed to be amended, and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in the companion legislation identified in subsection (a).

Section 4. Public Trust Findings.

At a public hearing on February 25, 2020, the Port Commission consented to the Development Agreement and approved the Port Lease, subject to Board of Supervisors' approval, finding that the Project would be consistent with and further the purposes of the common law public trust and statutory trust under the Burton Act (Stats. 1968, ch. 1333) by Resolution No. 20-12, a copy of which is in Board File No. 200040. The Board of Supervisors adopts and incorporates in this Ordinance the Port Commission's public trust findings.

Section 5. Development Agreement.

(a) The Board of Supervisors approves all of the terms and conditions of the Development Agreement, in substantially the form on file with the Clerk of the Board of Supervisors in File No. 200040.

(b) The Board of Supervisors approves and authorizes the execution, delivery and performance by the City of the Development Agreement as follows: (i) the Director of Planning and (other City officials listed thereon) are authorized to execute and deliver the Development Agreement, with signed consents of those City departments, agencies, boards, commissions, and bureaus that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including the San Francisco Municipal Transportation Agency, the San Francisco Public Utilities Commission, the Port Commission, and the San Francisco Fire Department; and (ii) the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement.

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

Section 6. Development Impact Fees.

By approving the Development Agreement, the Board of Supervisors authorizes the Controller and City Departments to accept the funds paid by Developer as set forth therein, and to appropriate and use the funds for the purposes described therein. The Board expressly approves the use of the development impact fees as set forth in the Development Agreement, and waives or overrides any provision in Article 4 of the City Planning Code and

Article 10 of the City Administrative Code that would conflict with the uses of these funds as described in the Development Agreement.

Section 7. City Administrative Code Chapter 56 Conformity.

The Development Agreement shall prevail in the event of any conflict between the Development Agreement and City Administrative Code Chapter 56, and without limiting the generality of the foregoing, the following provisions of City Administrative Code Chapter 56 are waived or deemed satisfied as follows:

(a) California Barrel Company LLC shall constitute a permitted "Applicant/Developer" for purposes of Chapter 56, Section 56.3(b).

(b) The Project comprises approximately 29 acres and is the type of large multi-phase and/or mixed-use development contemplated by the City Administrative Code and therefore satisfies the provisions of Chapter 56, Section 56.3(g).

(c) The provisions of Development Agreement and the Workforce Agreement attached to the Development Agreement as Exhibit F shall apply in lieu of the provisions of City Administrative Code Chapter 56, Section 56.7(c).

(d) The provisions of the Development Agreement regarding any amendment or termination, including those relating to "Material Change," shall apply in lieu of the provisions of Chapter 56, Section 56.15 and Section 56.18.

(e) The provisions of Chapter 56, Section 56.20 have been satisfied by the Memorandum of Understanding between Developer and the Office of Economic and Workforce Development for the reimbursement of City costs, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 200040.

(f) The Board of Supervisors waives the applicability of Section 56.4 (Application, 18 Forms, Initial Notice, Hearing) and Section 56.10 (Negotiation Report and Documents).

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Section 8. Chapter 56 Waiver; Ratification.

(a) In connection with the Development Agreement, the Board of Supervisors finds that the City has substantially complied with the requirements of Administrative Code Chapter 56, and waives any procedural or other requirements if and to the extent not strictly complied with.

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

Section 9. Planning Code Waivers; Ratification.

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

(b) The Board of Supervisors finds that the Transportation Demand Management Plan ("TDM Plan") attached to the Development Agreement and other provisions that meet the goals of the City's Transportation Demand Management Program in Planning Code Section 169 and waives the application of Section 169 to the Project on the condition that Developer implements and complies with the TDM Plan.

(c) The Board of Supervisors finds that the Design for Development attached to the Development Agreement sets forth sufficient standards for streetscape design and waives the requirements of Planning Code Section 138.1 (Streetscape and Pedestrian Improvements).

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Section 10. Other Administrative Code Waivers.

The requirements of the Workforce Agreement attached to the Development Agreement shall apply and shall supersede, to the extent of any conflict, the provisions of Administrative Code: (i) Chapter 82.4 (Coverage); (ii) Chapter 23, Article II (Interdepartmental Transfer of Real Property); and (iii) Chapter 23, Article VII (Prevailing Wage, Apprenticeship, and Local Hire Requirements), but only to the extent any of the foregoing provisions are applicable to the conveyance of vacated streets from the City to Developer and the other land conveyances contemplated by the Development Agreement.

Section 11. Subdivision Code Waivers.

A Public Improvement Agreement, if applicable and as defined in the Development Agreement, shall include provisions consistent with the Development Agreement and the applicable requirements of the Municipal Code and the Subdivision Regulations regarding extensions of time and remedies that apply when improvements are not completed within the agreed time. Accordingly, the Board of Supervisors waives the application to the Project of Subdivision 4 Code Section 1348 (Failure to Complete Improvements within Agreed Time).

Section 12. Public Works Code Waivers.

The Board of Supervisors finds that the Design for Development attached to the Development Agreement sets forth sufficient standards for streetscape design and waives the requirements of Planning Code Section 138.1 (Streetscape and Pedestrian Improvements) and Public Works Code Section 806(d) (Required Street Trees for Development Projects).

Section 13. Effective and Operative Date. This Ordinance shall become effective 30 days from the date of passage. This Ordinance shall become operative only on (and no rights or duties are affected until) the later of (a) 30 days from the date of its passage, or (b) the date that Ordinance 61-20, Ordinance 62-20, and Ordinance 64-20 have become effective.

Copies of these Ordinances are on file with the Clerk of the Board of Supervisors in File Nos. 200174, 200039, and 200040.

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

By: _____
HEIDI J. GEWERTZ
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: 200040 **Date Passed:** April 21, 2020

Ordinance approving a Development Agreement between the City and County of San Francisco and California Barrel Company LLC, a California limited liability company, for the Potrero Power Station Mixed-Use Project at the approximately 29-acre site generally bounded by 22nd Street to the north, the San Francisco Bay to the east, 23rd Street to the south, and Illinois Street to the west, in the southeast part of San Francisco, with various public benefits, including 30% affordable housing and approximately 6.9 acres of publicly-accessible parks and open space; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); making public trust findings in accordance with the approval of a ground lease of Port-owned land; approving specific development impact fees and waiving any conflicting provisions in Planning Code, Article 4, or Administrative Code, Article 10; confirming compliance with or waiving certain provisions of Administrative Code, Chapters 14B, 23, 56, 82, and 99, Planning Code, Sections 169 and 138.1, Public Works Code, Section 806(d), and Subdivision Code, Section 1348; and ratifying certain actions taken in connection therewith, as defined herein.

April 13, 2020 Land Use and Transportation Committee - RECOMMENDED AS COMMITTEE REPORT

April 14, 2020 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

April 21, 2020 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

File No. 200040

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/21/2020 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

4/24/20
Date Approved