

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

3 **Ordinance approving a Development Agreement between the City and County of San**  
4 **Francisco and California Barrel Company LLC, a California limited liability company, for**  
5 **the Potrero Power Station Mixed-Use Project at the approximately 29-acre site generally**  
6 **bound by 22<sup>nd</sup> Street to the north, the San Francisco Bay to the east, 23<sup>rd</sup> Street to the**  
7 **south and Illinois Street to the west, in the southeast part of San Francisco, with various**  
8 **public benefits, including 30% affordable housing and approximately 6.9 acres of**  
9 **publicly-accessible parks and open space; making findings under the California**  
10 **Environmental Quality Act, findings of conformity with the General Plan, and with the**  
11 **eight priority policies of Planning Code, Section 101.1 (b); making public trust findings**  
12 **in accordance with the approval of a ground lease of Port-owned land; approving**  
13 **specific development impact fees and waiving any conflicting provision in Planning**  
14 **Code, Article 4, or Administrative Code, Article 10; confirming compliance with or**  
15 **waiving certain provisions of Administrative Code, Chapters 14B, 23, 56, and and 82, and**  
16 **99 and Planning Code, Sections 169 and 138.1, Public Works Code, Section 806(d), and**  
17 **Subdivision Code, Section 1348, and ratifying certain actions taken in connection**  
18 **therewith.**

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:

1 Section 1. Project Findings.

2 The Board of Supervisors makes the following findings:

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

6 (b) Pursuant to California Government Code Section 65865, Chapter 56 of the San  
7 Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing  
8 and approval of development agreements in the City and County of San Francisco (the  
9 "City").

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

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

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

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

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

16 (g) On December \_\_\_\_, 2019, Developer filed an application with the City's Planning  
17 Department for approval of a development agreement relating to the Project Site (the  
18 "Development Agreement") under Chapter 56. A copy of the Development Agreement is on  
19 file with the Clerk of the Board in File No. \_\_\_\_\_. Developer also filed applications with  
20 the Department for certain activities described in Exhibit B to the Development Agreement  
21 (collectively, the “Project”).

22  
23 (h) While the Development Agreement is between the City, acting primarily through the  
24 Planning Department, and Developer, other City agencies retain a role in reviewing and  
25 issuing certain later approvals for the Project. Later approvals include all approvals required

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

10 (i) The Project is a phased, mixed use development on the Project Site that will include  
11 up to approximately 2,601 dwelling units, 1.5 million gross square feet (gsf) of office and/or life  
12 science / laboratory use, 241,574 gsf of hotel (250 rooms), 50,000 gsf of community facilities,  
13 35,000 gsf PDR, 25,000 gsf assembly space, 99,464 gsf of retail, 1,862 bicycle parking  
14 spaces, 2,686 parking spaces and the development and improvement of 6.9 acres of publicly  
15 accessible open space, in addition to new streets, sidewalks, and bicycle lanes throughout the  
16 site, all as more particularly described in the Development Agreement.

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

1 ordinances, regulations and policies and that are intended to constitute thirty percent (30%) of  
2 the total number of housing units for the Project; (ii) workforce obligations, including significant  
3 training, employment and economic development opportunities, related to the development  
4 and operation of the Project; (iii) construction and maintenance of publicly accessible open  
5 space, totaling approximately 6.9 acres, including (a) a series of contiguous, integrated  
6 waterfront parks, including extension of the Blue Greenway and Bay Trail and creation of a  
7 3.6-acre Waterfront Park, (b) a 1.2-acre central green space in the interior of the Project Site,  
8 (c) a 0.7-acre plaza type open space and (d) a publicly accessible soccer field; (iv) delivery of  
9 child care spaces totaling not less than 12,000 gross square feet; (v) sea level rise  
10 improvements as part of the development of the Project; and (vi) a design of the Project  
11 prioritizing and promoting travel by walking, biking and transit for new residents, tenants,  
12 employees and visitors; all as further described in the Development Agreement. The  
13 Development Agreement will eliminate uncertainty in the City's land use planning for the  
14 Project Site and secure orderly development.

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

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

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

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

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

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

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

17 Section 4. Public Trust Findings.

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

25 Section 5. Development Agreement.

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

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

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

20 Section 6. Development Impact Fees.

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

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

3 Section 7. City Administrative Code Chapter 56 Conformity.

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

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

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

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

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

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

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

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1 Section 8. Chapter 56 Waiver; Ratification.

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

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

9 Section 9. Planning Code Waivers; Ratification.

10 (a) The Board of Supervisors finds that the impact fees and other exactions due under  
11 the 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 and exactions due under the  
15 Development Agreement.

16 (b) The Board of Supervisors finds that the Transportation Demand Management Plan  
17 ("TDM Plan") attached to the Development Agreement and other provisions that meet the  
18 goals of the City's Transportation Demand Management Program in Planning Code Section  
19 169 and waives the application of Section 169 to the Project on the condition that Developer  
20 implements and complies with the TDM Plan.

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

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1 Section 10. Other Administrative Code Waivers.

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

9 Section 11. Subdivision Code Waivers.

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

16 Section 12. Public Works Code Waivers.

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

21 Section 13. Effective and Operative Date. This Ordinance shall become effective 30  
22 days from the date of passage. This Ordinance shall become operative only on (and no rights  
23 or duties are affected until) the later of (a) 30 days from the date of its passage, or (b) the date  
24 that Ordinance \_\_\_\_\_, Ordinance \_\_\_\_\_, and Ordinance \_\_\_\_\_ have become effective.

1 Copies of these Ordinances are on file with the Clerk of the Board of Supervisors in File Nos.

2 \_\_\_\_\_.

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

6 By: \_\_\_\_\_  
7 HEIDI J. GEWERTZ  
8 Deputy City Attorney  
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