




## MEMORANDUM

August 7, 2020

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of an amendment to the Pier 70 Special Use District Design for Development to allow residential buildings with a 90-foot height limit to contain up to 9 stories, as approved by the Planning Commission on February 6, 2020.

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 20-38

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### **EXECUTIVE SUMMARY**

The Port's development partner, Brookfield, has requested an amendment to the Pier 70 Special Use District ("SUD") Design for Development ("D4D") to allow residential buildings with a 90-foot height limit to contain up to nine residential stories within that same height limit, where currently limited to 8-stories, by reducing residential floor-to-ceiling heights. The amendment is beneficial because it provides flexibility to add additional floor area to select residential parcels, which face feasibility challenges in the current market. The amendment does not change: (1) overall building heights set by the SUD and approved by the voters with the passage of Proposition F in 2014, (2) the minimum 15-foot ground floor ceiling heights required by Standard 6.8.3 of the D4D, (3) the overall development capacity authorized in the SUD and analyzed in the Pier 70 Final Environmental Impact Report ("Final EIR"), or (4) the development capacity of Parcels E2 and A which were acted upon by the Port Commission on February 25, 2020.

The amendment was presented to the Port Commission as an informational item on May 12, 2020, at which time the Commission asked for clarification on the following

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topics:

- 1) How much additional square footage and/or units could be gained across the project? Likely none. While the development capacity of select residential parcels could be increased as a result of the amendment, there would need to be a decrease on other parcels to ensure the overall maximum development capacity set by the Final EIR is not exceeded;
- 2) What are the financial benefits to the Port? Any additional dwelling units or square footage gained on a particular parcel would be considered in an appraisal undertaken to determine that parcel's fair market value, likely resulting in a higher value. In addition, at least three of the parcels that could benefit from the amendment are condominium parcels, which have particular financial benefits to the Port because the Port captures a transfer fee of 1.5% of the purchase price of each condominium unit after the initial sale; and
- 3) What is the impact on affordable housing, either through additional inclusionary units or in-lieu fees? For condominium parcels, the amendment could result in additional affordable housing fees to the City (set at \$79 per gross square foot of residential uses, adjusted annually), which support the three 100% affordable projects in the SUD. For rental parcels, additional inclusionary units could be generated on a parcel-by-parcel basis, but as noted above there would likely be a commensurate decrease elsewhere in the SUD. Overall, the percentage of inclusionary units would remain at 20% of all rental units and the percentage of affordable units site-wide would remain at 30%.

Port Staff seeks approval of the attached resolution amending the D4D to allow residential buildings with a 90-foot height limit to include a maximum of 9-stories with no changes to previously authorized building heights or massing. Staff presented the amendment as part of a Pier 70 update to the Central Waterfront Advisory Group and Southern Waterfront Advisory Committee on December 5, 2019. The amendment was approved by the Planning Commission on February 6, 2020.

### **Strategic Objective**

The proposed amendment to the D4D meets the **Productivity** Port Strategic Objective as follows:

**Productivity - Further the Pier 70 development.** The proposed amendment would help advance implementation of residential development within the Pier 70 SUD.

### **Project Background**

In September 2017, the Port Commission adopted a series of resolutions authorizing the Pier 70 Mixed-Use District Project ("Project") and SUD on a 28-Acre Site within Pier 70, the Illinois/20<sup>th</sup> Street parcels known as Parcel K North and Parcel K South, and the "Hoedown Yard" located directly to the south. Subsequently, in October 2017, the San Francisco Board of Supervisors approved the Project, and on November 15<sup>th</sup>, 2017,

Mayor Lee signed all Project-related legislation. These approvals included adoption of the D4D, which establishes design controls, standards, and guidelines, and amending the Planning Code to include the SUD (Section 249.79).

The Port's development partner for development of the 28-Acre Site is FC Pier 70, LLC ("Developer" or "Brookfield"), now an affiliate of Brookfield Properties. The 28-Acre Site project is governed by a Disposition and Development Agreement dated as of May 2, 2018 ("DDA") and related agreements between the Port and the Developer.

Phase 1 horizontal construction is underway and includes the development of 3 acres of parks and backbone infrastructure to support an anticipated 665 residential units and more than 100,000 square feet of maker/PDR/retail space. The rehabilitation of historic Building 12 is currently underway, and the Developer has received design review and administrative approval for two other vertical projects, neither of which would be affected by the proposed D4D amendment:

1. Parcel E-2, containing 281 rental dwelling units within a 70-foot building (consistent with maximum height limit); and
2. Parcel A, a 353,459 square foot office building.

### **Local Business Enterprise Status**

The 28-acre Site project led by Brookfield has a 17.0% Local Business Enterprise ("LBE") participation goal. Contracts awarded during the first quarter of 2020 (end of March) were comprised primarily of Phase 1 horizontal improvement construction work, early phase construction work on historic Building 12 and design consultants for upcoming vertical projects. Brookfield also expanded the role of RDJ Enterprises, an LBE-Minority Business Enterprise ("MBE") firm, to tailor LBE engagement efforts and provide technical assistance to LBEs with barriers to entry in order to maximize LBE participation on available trade packages.

The main contract awarded in the first quarter of 2020 was the construction of Pier 70's first vertical building, historic Building 12, to general contractor Plant Construction. Plant and its subcontractors are still in the process of subcontracting out all the dollars targeted for LBEs under the general contract. As a result, the current percentage of contracted dollars to LBEs is lower than it will ultimately be once Plant and its subcontractors finish subcontracting. Through the end of the first quarter 2020, Plant has only awarded approximately 45% of the subcontracts under the Building 12 general contract, including work for site preparation, abatement, structural steel, and work associated with lifting the historic structure. There is another approximately \$6M dollars under the general Building 12 contract that Plant is targeting for LBE subcontracts. As a result, the statistics in the following paragraph do not capture all the LBEs that are anticipated to work on the Building 12 project. Upon award of all remaining subcontractors at Building 12, Brookfield anticipates the overall project will award over \$50M or 26% in contracts to all LBEs.

Through the end of the first quarter of 2020, the Developer has awarded \$187.9 million in contracts, of which \$44.3 million or 23.6% has been awarded either directly or through subcontracts with general contractors to LBE firms, including Small Business Administration-LBEs. \$40.1 million or 21.3% has been awarded to small and micro-LBE firms. \$22.4 million or 11.2% of total contract dollars has been awarded to small and micro-LBE firms located in the three zip codes (94107, 94124 & 94134) located next to the project area.

Vertical construction, in particular the “super structure” component of the projects, typically have more difficulty achieving higher LBEs participation rates in San Francisco compared to horizontal projects, which require fewer specialty trades that may not include as wide a range of LBE companies. As a result, Brookfield has taken advantage of its horizontal work to significantly exceed its LBE goal and will continue to target higher LBE levels on the infrastructure, parks and other horizontal work scopes of the project going forward. In addition, in advance of the project entering into the vertical building phase, RDJ undertook a “deep dive” analysis to identify LBEs that are well positioned to bid on upcoming vertical construction and/or will benefit from increased coordination efforts for construction scope matching within interior trades with good availability of LBE firms. RDJ has also focused on directing LBEs to COVID-19 business supports to ensure stability and certainty that they will still be available for these forthcoming LBE opportunities. While the Developer will continue to focus its efforts on maximizing opportunities for LBEs on all aspects of the projects to continue to meet or exceed the 17% LBE goal, given the coming shift of scope to vertical construction opportunities, Brookfield anticipates seeing a lower LBE participation rate in subsequent LBE participation reports than has been previously reported for primarily horizontal work.

Brookfield has been proactively working to increase the diversity of its team. In the first quarter of 2020 (with commencement of work on Building 12), Brookfield awarded \$15.6 million in contracts to MBEs, including \$5.2 million to LBE-MBE firms. LBE-MBE contractors that have commenced work on Building 12 include Eagle Environmental (performing abatement work, Hercules Builders performing carpentry work on the building’s new roof, Marinship Development performing work on the building’s shoring, Ground Control and On-the-Level Concrete performing concrete demolition and foundation work, respectively.

### **Proposed D4D Amendment**

The Developer has requested an amendment to Standard 6.4.2 of the D4D to allow residential buildings with a 90-foot height maximum to contain up to nine stories within that same height limit, where currently they are limited to eight stories (see Attachment 1, Amended D4D Page), by effectively reducing residential floor-to-ceiling heights. No changes are being requested to overall building heights established by Proposition F and legislated by the SUD, the minimum 15-foot ground floor ceiling heights required by Standard 6.8.3 of the D4D, or the overall development capacity analyzed in the Final EIR.

## **Analysis**

Increasing the residential story maximum to nine stories in buildings with a 90-foot height maximum would be appropriate and consistent with the Project approvals and the intent of the D4D, as it provides flexibility in the design and development of residential parcels at the site. Any additional units or square footage would remain at/under the maximum number analyzed in the Final EIR and maintain consistency with the DDA, Planning Code SUD controls, Proposition F and San Francisco General Plan policies for Pier 70. The design intent of the project will remain intact due to established controls around ground floor and building height, which would remain unchanged. The proposed D4D amendment would only affect residential parcels that have a maximum height limit of 90-feet. In Phase 1, these parcels are Parcel D, Parcel C2A and C2B. Parcels A and E2, which were discussed during the Port Commission's February 25, 2020 meeting, are not affected by this amendment. In later phases, these parcels could include Parcel E1, Parcels C1A-C1C, Parcel F, Parcel G, and Parcels H1-H2. (See Attachment 2).

Additionally, this amendment would allow the value of individual parcels with a 90-foot height limit to be maximized by adding an additional floor if supported by the market at the time the building is being designed. The value of the additional floor and associated dwelling units would be considered in the appraisal that is undertaken to determine the parcel's fair market value, as set forth in the DDA. In addition, for those parcels that are to be developed with condominiums (Parcels D, C2A, and C1B, at a minimum), the proposed D4D amendment could result in additional affordable housing fees to the City (which are set at \$79 per gross square foot of residential uses, adjusted annually) and transfer fees to the Port (set at 1.5 % of the purchase price of each condominium unit, after the initial sale).

At the Port Commission meeting of May 12, 2020, staff was asked by the Port Commission if the D4D amendment would increase the development capacity of the Project. As mentioned above, the D4D amendment will not permit the Developer to exceed the maximum development capacity allowed under the Final EIR for the Project overall. Therefore, while the development capacity of individual residential parcels could be increased due to the D4D amendment, there would likely need to be a decrease on other parcels to ensure that the Final EIR maximum development capacity for the Project is not exceeded.

Several factors make the analysis of a specific square footage impact on individual parcels resulting from the D4D amendment difficult:

- (1) Until buildings are designed, the actual development capacity of each parcel is a rough estimate. By way of example, Parcels E2 and A were roughly estimated at Project entitlements to have 284,000 and 305,000 gross building square footage of residential and office uses, respectively, but with approved schematic designs are now anticipated to yield approximately 275,000 and 298,000 square feet respectively, exclusive of parking and basements;

- (2) Parcels F, G, and H are flex parcels which means they can be developed as either residential or office, which have different design profiles; and
- (3) Because the D4D provides flexibility as to how individual parcels are designed, it provides more total square footage capacity than can be built under the Final EIR.

Noting these caveats, Port staff estimates that, if there were not an existing capacity limitation created by the Final EIR for the project overall, the amendment could result in approximately 170,000 additional gross square footage of residential assuming the three flex parcels (F, G and H) are developed as residential, along with Parcels C1A, C1C, D and E1. However, since the Final EIR does limit development capacity, any resulting increase in development on one of the residential sites by adding an extra floor would likely need to be counter balanced with a reduction elsewhere in the Project to remain at or below the Final EIR limit on development capacity.

Staff presented the amendment as part of a Pier 70 update to the Central Waterfront Advisory Group and Southern Waterfront Advisory Committee on December 5, 2019. On February 6, 2020, the Planning Commission approved the amendment.

### **Recommendation**

In summary, Port staff supports the proposed Pier 70 D4D amendment based on the following:

- The amendment would help implement the Pier 70 Mixed-Use Project by providing flexibility in the design and development of residential parcels at the site; and
- The amendment is consistent with all requirements of the SUD (Section 249.79 of the Planning Code), the San Francisco General Plan, and the DDA; and
- The amendment to the D4D does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the Final EIR and thus is consistent with the adopted Final EIR; and
- The amendment does not alter the maximum building heights approved by the voters in 2014 with the passage of Proposition F; and
- The amendment to the D4D would improve the financial feasibility of residential buildings within the Project by increasing the number of units that can be built on a parcel by parcel basis, within the overall limits of the Final EIR.

As approved by the Planning Commission on February 6, 2020, staff requests that the Port Commission adopt the attached resolution amending the D4D to increase the residential story maximum to nine stories in residential buildings within the legislated 90-foot height limit, as shown on Attachment 2.

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**Attachment**

1. Amended D4D Page
2. Pier 70 Parcels Impacted by Proposed D4D Amendment

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 20-38**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, On September 26, 2017, the Port Commission approved Resolution No. 17-43 approving a Development Disposition Agreement (“DDA”) between Port and FC Pier 70, LLC (“Developer”), an affiliate of Brookfield Properties, for a mixed-use development project on the 28-Acre Site (the “Project”), creation of the Pier 70 Special Use District, including the 28-Acre Site, Parcel K North, Parcel K South and the Hoedown Yard (“Pier 70 SUD”), and Pier 70 District Design for Development (“D4D”), which provides land use controls, detailed development standards and guidelines for buildings, open space and streetscape improvements for development and improvements in the Pier 70 SUD; and
- WHEREAS, On October 31, 2017, the San Francisco Board of Supervisors approved the Project, the Pier 70 SUD, and the Development Agreement by and between Developer and the City, dated as of May 2, 2018 (“DA”); and
- WHEREAS, Subsequently, Mayor Lee signed all necessary legislation; and
- WHEREAS, The DDA specifies Developer’s construction obligations for the Project (collectively, the “Construction Requirements”), and development is subject to the DA, the DDA, the Pier 70 SUD, the D4D and other applicable laws and policies (collectively, the “Project Requirements”); and
- WHEREAS, On December 11, 2019, the Developer requested an amendment to Standard 6.4.2 of the D4D to allow residential buildings within the Pier 70 SUD with a 90-foot height limit to contain nine stories where currently they are limited to eight stories, while maintaining the same permitted heights and overall massing required by other D4D standards; and
- WHEREAS, Planning Code Section 249.79(c) authorizes the Planning Commission and the Port Commission to amend the D4D upon approval by both bodies, to the extent that such amendment is consistent with Planning Code Section 249.79, the San Francisco General Plan, and the DA; and
- WHEREAS, The proposed D4D amendment, shown in Attachment 1 (“D4D Amendment”), would allow the Developer to maximize the capacity for



development of residential units in the Project while maintaining the same permitted heights and overall massing required by other standards of the D4D; and

WHEREAS, The proposed D4D Amendment is consistent with the Pier 70 Mixed Use District Final Environmental Impact Report (“FEIR”) (2014-001272ENV) and does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR; and

WHEREAS, On February 6, 2020, the Planning Commission adopted the proposed D4D Amendment; now therefore, be it

RESOLVED, That the Port Commission approves the requested D4D Amendment to standard 6.4.2 of the D4D, as shown in Attachment 1, for the following reasons:

1. The D4D Amendment would help implement the Pier 70 Mixed-Use Project by providing flexibility in the design and development of residential parcels at the site.
2. The D4D Amendment is consistent with all requirements of Section 249.79 of the Planning Code, the San Francisco General Plan, and the DA.
3. The D4D Amendment does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR and thus is consistent with the adopted FEIR.
4. The amendment does not alter the maximum buildings height approved by the voters in 2014 with the passage of Proposition F.
5. The D4D Amendment would improve the financial feasibility of residential buildings within the Pier 70 SUD by increasing the number of units that can be built on a parcel by parcel basis, within the overall limits of the FEIR.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 11, 2020.***

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Secretary