



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

---

**AN ORDINANCE: (A) APPROVING, PURSUANT TO ARTICLE VII OF THE OAKLAND CITY CHARTER, THE RELINQUISHMENT BY THE BOARD OF PORT COMMISSIONERS TO THE CITY COUNCIL JURISDICTIONAL RESPONSIBILITIES NECESSARY TO APPROVE, PERMIT, AND ADMINISTER PROJECT APPROVALS FOR THE PROPOSED OAKLAND WATERFRONT BALLPARK DISTRICT PROJECT TO BE DEVELOPED ON THAT PORTION OF THE PORT AREA THAT IS COMMONLY KNOWN AS THE CHARLES P. HOWARD TERMINAL AND IS LOCATED ALONG THE INNER HARBOR OF THE OAKLAND-ALAMEDA ESTUARY; AND (B) MAKING APPROPRIATE FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Oakland (“City”) is a municipal corporation, enabled by authority vested through its Charter, adopted by the people of the City on November 5, 1968 and ratified and made effective by the California Secretary of State on January 28, 1969 (as amended, the “Charter”); and

**WHEREAS**, as a charter city, the City has broad local authority with respect to land use planning and building permitting of lands lying within the City boundaries; and

**WHEREAS**, under Article VII of the Charter a department of the City known as the Port Department is established, so as to promote and more definitely insure the comprehensive and adequate development of the Port of Oakland (the “Port”) through continuity of control, management and operation; and

**WHEREAS**, Section 701 of the Charter vests in the Board of Port Commissioners (the “Port Board”) exclusive control and management of the Port and power over certain lands of the City referred to as the “Port Area”; and

**WHEREAS**, pursuant to Section 706(4) of the Charter, the Port Board has the complete and exclusive power to “enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development, and in carrying out the powers elsewhere vested in the Board; [p]rovided, however, that with the approval of the Council the

Board may relinquish to the Council control of portions of the said area, and likewise, upon request of the Board, the Council may, by ordinance, enlarge the Port Area”; and

**WHEREAS**, the Oakland Athletics, including its affiliates and/or approved transferees (as the case may be, the “**Oakland Athletics**”), have proposed to build a new major league ballpark, together with residential and mixed-use development, including retail, commercial, office, cultural, entertainment, hotel, and recreational uses (the “**Proposed Project**”); and

**WHEREAS**, the Proposed Project is on the area that is commonly known as the Charles P. Howard Terminal and is located along the inner harbor of the Oakland-Alameda Estuary consisting of approximately 55 acres of real property, approximately 50 acres of which lie within the Port Area (such 50 acres being referred to herein as the “**Port Area Project Site**”); and

**WHEREAS**, development of the Proposed Project will require discretionary approvals from both the City and the Port, in accordance with their respective jurisdictional authorities set forth in Article VII of the Charter, including, without limitation, Sections 706(23), 708, 712, 713, and 727; and

**WHEREAS**, in the past, to reduce administrative duplication and create regulatory certainty, the Port Board and the City Council modified, through City Ordinance 12229 C.M.S. and Port Resolution 20095 dated February 22, 2000, their shared jurisdictional authorities to administer development permits and manage other areas of the Port Area located within the Estuary Policy Plan Area; and

**WHEREAS**, on May 13, 2019, pursuant to Resolution No. 19-32 (“**Port ENTS Resolution**”), the Port Board approved a non-binding Exclusive Negotiation Term Sheet for the Proposed Project, outlining the preliminary negotiating terms of the Proposed Project; which term sheet (the “**ENTS**”) was attached and incorporated by reference into the Port ENTS Resolution; and

**WHEREAS**, through various sections of the ENTS, including without limitation Section E(b) of the Purpose & Overview and Section 5 of the ENTS, the Port ENTS Resolution contemplated that the City Council would approve a General Plan amendment and residential use within the Port Area Project Site pursuant to the Charter, and in addition, intended that the City Council accept additional responsibilities to consider and review Project-specific land use regulations , including zoning amendments and design review; and

**WHEREAS**, in furtherance of the Port ENTS Resolution, on January 21, 2020, the City Council authorized the City Administrator to execute that certain non-binding Memorandum of Understanding Between City and Port Regarding Howard Terminal Oakland A’s Ballpark Project through the adoption of Resolution No. 87998 C.M.S (the “**City-Port MOU**”); and

**WHEREAS**, the City-Port MOU sets forth a proposed framework by which the Port and the City can avoid administrative duplication, appropriately allocate regulatory land use authority, and facilitate the analysis of and, if approved by all applicable government agencies and entities, the development of the Proposed Project; and

**WHEREAS**, as effectuated by the Port ENTS Resolution and execution of the City-Port MOU, the Port Board desires to relinquish to the City Council, in addition to those powers already vested with the City Council pursuant to the Charter (“**City’s Jurisdictional Authority**”), additional jurisdictional responsibilities necessary to approve, permit and administer requisite development approvals for the Proposed Project on the Port Area Project Site, in accordance with the processes and procedures set forth in the Oakland Municipal Code, including, without limitation, Articles 12, 15 and 17 (collectively, “**City’s Additional Jurisdictional Responsibilities**”); and

**WHEREAS**, the City’s Additional Jurisdictional Responsibilities do not include the discretionary approval of the Port Building Permit pursuant to Section 708 of the Charter nor the discretionary approval and execution of real property agreements necessary to effectuate the Proposed Project pursuant to Sections 706 and 709 of the Charter, which responsibilities shall remain vested in the Port; and

**WHEREAS**, the Port Board will consider entering into a Development Agreement for the Proposed Project as related to its discretionary approval of the Port Building Permit; and

**WHEREAS**, the City’s Jurisdictional Authority and the City’s Additional Jurisdictional Responsibilities shall collectively be referred to as the “**Project Approvals**”; and

**WHEREAS**, to actualize the Proposed Project, a substantial investment will be needed for onsite and offsite public infrastructure as well as other community benefits such as affordable housing (collectively, the “**Public Infrastructure**”); and

**WHEREAS**, as potential funding for portions of the Public Infrastructure, the City is investigating the creation of an enhanced infrastructure financing district established under California Government Code §53398.50 et seq. (“**EIFD**”); and

**WHEREAS**, the adoption of this Ordinance is a discretionary action of the City and is a required action for the City’s consideration of the Project Approvals, which are necessary to implement the Proposed Project; and

**WHEREAS**, in accordance with the California Environmental Quality Act (“**CEQA**”), the City, as lead agency under CEQA, prepared an environmental impact report for the Proposed Project (“**Environmental Impact Report**”); and

**WHEREAS**, on February \_\_, 2022, in Resolution No. XXXX, the City Council certified the Environmental Impact Report, adopted CEQA Findings on Impacts and Mitigation Measures for the Proposed Project with the Grade Separation Alternative (Alternative 3), and Rejecting Other Alternatives and Certain Mitigation Measures as Infeasible, a Statement of Overriding Considerations and a Mitigation, Monitoring and Reporting Program, which selected the Proposed Project with the Grade Separation Alternative (Alternative 3), in compliance with the CEQA Guidelines Sections 15090, 15091, 15092 and 15093], and the City’s procedures for implementing CEQA; and

**WHEREAS**, the Port of Oakland has stated support for the Grade Separation Alternative (Alternative 3), identified in the Environmental Impact Report, because it would promote vehicular safety, pedestrian safety and freight efficiency, and the City further recognizes that Grade Separation Alternative would provide significant public and safety benefits that would not be provided by the Project or the other alternatives, by allowing, among other things, for the waterfront to be connected to the City street grid without an at-grade railroad crossing; and

**WHEREAS**, the Environmental Impact Report provides an analysis of the environmental impacts of the Proposed Project and supports all levels of approval necessary to implement the Proposed Project with the Grade Separation Alternative, including the adoption of this Ordinance; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds and determines the foregoing recitals to be true and correct, are an integral part of its decision, and hereby makes them a part of this Ordinance.

**SECTION 2.** The City Council hereby approves, pursuant to Article VII of the City Charter, the relinquishment by the Board of Port Commissioners to the City Council the City's Additional Jurisdictional Responsibilities necessary to approve, permit, and administer Project Approvals on the Port Area Project Site, consistent with the Port ENTS Resolution and the City-Port MOU; except that the City's Additional Jurisdictional Responsibilities shall terminate (a) in whole, in the event the Proposed Project does not proceed at the Port Area Project Site; (b) in part, in the event any portion of the Port Area Project Site reverts to the Port pursuant to real estate agreements between the Port and the Oakland Athletics; but (c) in no event shall any such termination occur prior to such date that is the earlier to occur of (x) fifty (50) years from the date of the first Project Approval(s) for the Proposed Project, other than this Ordinance, or (y) the date on which any EIFD established over the Port Area Project Site terminates.

**SECTION 3.** The City Council authorizes the City Administrator or his or her designee to take all actions necessary for the City to approve, permit and administer the Project Approvals, including returning to, for subsequent approvals, the City Council, Planning Commission and other committees and boards as and when otherwise required under the Oakland Municipal Code.

**SECTION 4.** The City Administrator shall have the authority to rely on the City-Port MOU, but to the extent there is a conflict between the City-Port MOU and this Ordinance, this Ordinance shall prevail and the City-Port MOU shall be superseded as to such matters of conflict.

**SECTION 5.** Except as has been modified by or stated otherwise in this Ordinance, this Ordinance does not constitute a waiver by either the Port or City of any of its respective authorities and jurisdiction over lands within the Port Area under the Charter, and each the Port and the City, respectively, reserves its powers under the Charter.

**SECTION 6.** This Ordinance does not authorize nor approve the EIFD, and the City Administrator shall return to the City Council for requisite approvals for the creation of any such EIFD as and when otherwise required under the Oakland Municipal Code and State law.

**SECTION 7.** The City Council hereby acknowledges the Port Board will consider entering into a Development Agreement for the Proposed Project as related to its discretionary approval of the Port Building Permit.

**SECTION 8.** The City Council finds that this Ordinance is subject to environmental review under the provisions of the CEQA. The Council finds and determines the adoption of this Ordinance complies with CEQA and relies on the certified Environmental Impact Report, the CEQA Findings on Impacts and Mitigation Measures for the Proposed Project with Grade Separation Alternative (Alternative 3), and Rejecting of Other Alternatives and Certain Mitigation Measures as Infeasible and Statement of Overriding Considerations, and the Mitigation, Monitoring and Reporting Program as adopted in Resolution No. XXXX. All reasonably feasible mitigation measures shall be imposed on the Project and be implemented by means of Project conditions, agreements, or other measures, as set forth in the adopted Mitigation Monitoring and Reporting Program, Exhibit B of Resolution No. XXXX. Consistent with Section 8 of the Resolution No. XXXX, upon the effective date of this Ordinance, the Environmental Review Officer shall file a Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

**SECTION 9.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 10.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

This Ordinance reflects the Oakland City Council's approval, pursuant to Article VII of the Oakland City Charter, the relinquishment by the Board of Port Commissioners to the Oakland City Council jurisdictional responsibilities necessary to approve, permit, and administer project approvals for the proposed Oakland Waterfront Ballpark District Project to be developed on that portion of the Port Area that is commonly known as the Charles P. Howard Terminal and is located along the inner harbor of the Oakland-Alameda Estuary. Such authority is for a finite time period and will terminate, in whole or in part, upon the occurrence of certain events. In its approval of the Ordinance, the Oakland City Council made appropriate findings under the California Environmental Quality Act.