



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** David Ferguson  
Interim Director, Public  
Works

**SUBJECT:** Transfer and Management Of The  
Brooklyn Basin Project Parks and  
Open Space from the Port of Oakland

**DATE:** August 26, 2020

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City Administrator Approval

Date: Sep 1, 2020

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## **RECOMMENDATION**

**Staff Recommends That The City Council: (1) Adopt An Ordinance To Approve And Authorize The Acceptance By The City Council Of Jurisdictional Control Of A Portion Of The Port Area Permanently Relinquished By The Port To Facilitate The Transfer And Long-Term Management By The City Of Public Open Space And Improvements Developed In Phases As Waterfront Parks As Part Of The Brooklyn Basin Project; And, (2) Authorize The City Administrator To Effectuate Such Acceptance For Each Phase Without Return To Council.**

## **EXECUTIVE SUMMARY**

The proposed ordinance will authorize the acceptance of jurisdictional control for a portion of the Port Area permanently relinquished by the Board of Port Commissioners ("Board") to facilitate the transfer and long-term management of public open space and improvements as waterfront parks developed in phases as waterfront parks by Zarsion-OHP I, LLC ("Developer") as part of the Brooklyn Basin Project and also authorize the City Administrator to effectuate such acceptance for each phase through negotiation and execution of the deed conveying the park improvements and related documentation to implement the transfer of each Waterfront Park.

## **BACKGROUND / LEGISLATIVE HISTORY**

To facilitate development, on April 4, 2000, in accordance with Sections 706(4) and 725 of the Charter, the Council adopted Ordinance No. 12229 C.M.S. (the "Estuary Plan Ordinance"), pursuant to which the Council, among other things, authorized the temporary alteration of the Port Area, including Brooklyn Basin (former Oak to Ninth District), as requested by the Board in the manner described in the Estuary Plan Ordinance.

The Brooklyn Basin Project ("Project") consists of mixed residential, retail/commercial, civic, and parks and open space uses approved by the Planning Commission on March 15, 2006, and for which a Development Agreement was executed on July 18, 2006, by the City of Oakland ("City"). The project sponsors plan to construct up to 3,100 residential units, 200,000 square

Oakland City Council  
September 15, 2020

feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total 170 boat slips), and an existing wetlands restoration area. The marinas will remain under the jurisdiction of the Port of Oakland ("Port").

In conjunction with the Development Agreement, the City approved various local land use entitlements for the Project, including certification of an Environmental Impact Report, approval of a General Plan amendment, establishment of new zoning regulations for the site, among other related City permits and approvals.

In 2010, the Board authorized various actions as part of the Oak to Ninth District Project between the Port and Developer, including the execution of a Purchase and Sale Agreement for approximately 30 acres of land for the development of the Project, execution of an Open Space Ground Lease for approximately 30 acres of property for development and operation of public waterfront parks on-site, execution of a Marina Lease for the development and operation of two recreational marinas, a Tidelands Trust Exchange Agreement for the Project, recordation of a BCDC permit for the Project, as well as numerous other related transaction documents and regulatory agency permits.

Pursuant to the Purchase and Sale Agreement, the Port, among other things, (a) agreed to transfer the upland portions of the waterfront parks to the City, including the upland piece underlying Township Commons (formerly a part of Shoreline Park) and the Ninth Avenue Terminal Shed, and (2) conveyed to Developer specific improvements, including the Ninth Avenue Terminal Shed building, pursuant to that certain Grant Deed [Open Space Ground Lease] dated as of June 5, 2013, and recorded in the Official Records as Instrument No. 2013-203247.

Developer commenced construction of the first phase of the Project in 2017. To date, a significant amount of the environmental remediation has been implemented on-site, a large portion of the interior roadways, lighting, and infrastructure is completed, the first building with residential units has been constructed, construction of the first two affordable housing projects is underway, the former Ninth Avenue Terminal Shed building has been deconstructed and redesigned into a commercial space and public access area, and the first phase of the public waterfront parks has been installed. The Project is anticipated to be constructed in phases over the next 10-year timeframe.

Under the Development Agreement, the City intends to take jurisdictional control of the public open space and ownership of the related park improvements (collectively, the "Waterfront Parks") in phases, when the required environmental remediation and installation of park improvement are completed by the Developer for each phase. An illustrative diagram showing the Waterfront Parks, as well as the Developer's planned phasing plan for remediation and construction of each park, is attached for reference (see **Attachment A**).

It is anticipated that the transfer of each Waterfront Park, the Port will terminate the Open Space Ground Lease, the City will accept the conveyance by deed of the Park Improvements granted by the Developer, and the City, Port and Developer will execute related documents to implement the transfer at each phase.

## **ANALYSIS AND POLICY ALTERNATIVES**

The City and the Port determined that upon completion of the development of Brooklyn Basin, and if the Port Area were to be restored to its original location pursuant to the Estuary Plan Ordinance or otherwise, the Waterfront Parks and the Ninth Avenue Terminal Shed building would be under the jurisdiction of both the Port and the City.

In accordance with the Charter of the City of Oakland (“Charter”), the Board adopted Resolution No. 20-64 on July 23, 2020 (see **Attachment B**), pursuant to which the Board requests and recommends, among other things, that the Council permanently alter the Port Area in phases with respect to the Waterfront Parks

To avoid dual Port-City jurisdiction over the Waterfront Parks, City staff recommends adopting an ordinance pursuant to the Charter to permanently alter and remove the Port Area from the Waterfront Parks and accept jurisdiction over the parks.

The proposed action to authorize the alteration and removal of the Port Area and to accept jurisdictional control over the Waterfront Parks in phases is intended to facilitate long-term operation and management of the Waterfront Parks by the City and is consistent with the Development Agreement. Based on the analysis contained within this agenda report, staff also recommends approval of authorizing the City Administrator to effectuate the transfer of the Waterfront Parks and acceptance of jurisdictional control as described herein.

## **FISCAL IMPACT**

A Community Facilities District (CFD) has been established to pay for the cost of maintenance for these parks.

## **PUBLIC OUTREACH / INTEREST**

This item does not require public outreach.

## **COORDINATION**

Staff from Planning and Building, Office of the City Attorney and City Administrator’s Office coordinated on this report.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** *There are no economic opportunities associated with this report.*

***Environmental:*** *The acceptance would not in any way change the physical characteristics of the Brooklyn Basin site, nor would it change the planned land uses. There would be no environmental effects as a result of the proposed acceptance.*

***Race & Equity:*** *Acceptance of the Port's relinquishment allows the City to open Township Commons Park, adding to the open space along the waterfront. This is especially important during the COVID-19 Pandemic and will offer greater access to open space for underserved communities.*

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

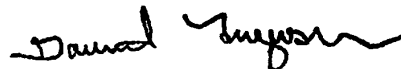
This action is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (general rule for projects that have no direct or reasonably foreseeable indirect physical change to the environment). Relinquishing control of a portion of the Port Area by the Board of Port Commissioners and acceptance of control by the City Council will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council: 1) Adopt An Ordinance To Approve And Authorize The Acceptance By The City Council Of Jurisdictional Control Of A Portion Of The Port Area Permanently Relinquished By The Port To Facilitate The Transfer And Long-Term Management By The City Of Public Open Space And Improvements Developed In Phases As Waterfront Parks As Part Of The Brooklyn Basin Project; And,  
2) Authorize The City Administrator To Effectuate Such Acceptance For Each Phase Without Return To Council.

For questions regarding this report, please contact Tom Morgan, Agency Administrative Manager, at 510-238-7953.

Respectfully submitted,



DAVID FERGUSON  
Interim Director, Public Works

Reviewed by: *Betsy Lake*  
Deputy City Administrator

Reviewed by: *JoAnne Dunec*  
Deputy City Attorney

Prepared by: Tom Morgan  
Agency Administrative Manager  
Bureau of Administration

Attachments (2):

- A: Illustrative Open Space Phasing Map
- B: Board of Port Commissioners Resolution 20-64