

2020 SEP 15 PM 4:00

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13617 C.M.S.

**ORDINANCE (1) APPROVING AND AUTHORIZING 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) AUTHORIZING THE CITY ADMINISTRATOR TO EFFECTUATE SUCH ACCEPTANCE FOR EACH PHASE**

**WHEREAS**, Section 706 of the Charter (“Charter”) of the City of Oakland (“City”) vests in the Board of Port Commissioners (“Board”), for and on behalf of the City of Oakland, exclusive power and jurisdiction over the Port Area; and

**WHEREAS**, Sections 706(4) and 725 of the Charter authorize the City Council of the City (“Council”), upon the request and recommendation of the Board, to alter the Port Area; and

**WHEREAS**, 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 in several areas, including Brooklyn Basin, as requested by the Board in the manner described in the Estuary Plan Ordinance.

**WHEREAS**, the City (as successor to the Oakland Redevelopment Agency of the City) and Zarsion-OHP I, LLC, a California limited liability company (the “Developer”) (as assignee of Oakland Harbor Partners, LLC), are parties to that certain Development Agreement, dated August 24, 2006, recorded in the Official Records of Alameda County (the “Official Records”) on August 30, 2006, as Instrument No. 2006331819 (as amended, the “Development Agreement”); and

**WHEREAS**, the Port and Developer (as assignee of original developer) entered into that certain unrecorded Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions, dated as of September 15, 2011 (as amended, the “Purchase and Sale Agreement”); and

**WHEREAS**, the Port and Developer (as assignee of original developer) entered into that certain Open Space Ground Lease, dated as of June 5, 2013, recorded in the Official Records on June 10, 2013, as Instrument No. 2013-203246 (as amended, the “Open Space Ground Lease”); and

**WHEREAS**, pursuant to the Development Agreement, Developer agreed, among other things, to develop certain Public Open Space (as defined in the Development Agreement) into waterfront parks in Brooklyn Basin (collectively, and together with Estuary Park to be developed by the City, the “Waterfront Parks”) and to renovate the Ninth Avenue Terminal Shed (as defined in the Development Agreement) located within the area of the Waterfront Parks, and to transfer the Waterfront Parks and improvements thereon to the City as all required conditions for such transfer provided in the Development Agreement are met; and

**WHEREAS**, pursuant to the Purchase and Sale Agreement, the Port, among other things, (1) agreed to transfer the upland portions of the Waterfront Parks to the City, including the upland portion underlying Township Commons (formerly a portion of Shoreline Park) and the Ninth Avenue Terminal Shed, and (2) conveyed to Developer certain 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; and

**WHEREAS**, pursuant to the Development Agreement the Developer has phased its construction and completion of the Public Open Space improvements in accordance with the Development Agreement, as described and depicted in the Phasing Plan attached hereto as Exhibit A (“Phasing Plan”) and the City has agreed to accept the transfer of Waterfront Parks and Public Open Space improvements in phases; and

**WHEREAS**, the City and the Port have determined that upon completion of the development of Brooklyn Basin, 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; and

**WHEREAS**, the Port and the City desire to authorize and effectuate for each phase as set forth in the Phasing Plan: (1) the permanent removal of the Port Area from the Waterfront Parks and any structures within such parks, including structures that extend over submerged lands, such as the deck and piles of Township Commons and the Ninth Avenue Terminal Shed building (collectively, the “Park Improvements”); (2) the relinquishment of the Port’s existing jurisdiction and landlord powers and authority derived therefrom with respect to the Waterfront Parks and the Park Improvements; and (3) acceptance of jurisdictional control over the Waterfront Parks and Park Improvements; to facilitate uniform operations and management of the Waterfront Parks by the City; and

**WHEREAS**, on July 23, 2020, the Board adopted Resolution No. 20-64, 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 and Park Improvements subject to the express condition that if the Council alters the Port Area as requested and recommended, the Board shall retain all of its existing regulatory jurisdiction, ownership and landlord powers and authority derived therefrom with respect to all other Port-owned properties within the Port Area, including the submerged lands over which the Park Improvements extend; and

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

**SECTION 1.** The City Council hereby finds that it is in the best interests of the City to permanently remove the Port Area from the Waterfront Parks and the Park Improvements, and to accept jurisdictional control of the Waterfront Parks and Park Improvements, in phases.

**SECTION 2.** The City Council hereby authorizes the permanent relinquishment of the Port Area from the Waterfront Parks and the Park Improvements in phases, as depicted in the Phasing Plan attached hereto as Attachment A, together with relinquishment of the Port's existing regulatory jurisdiction and landlord powers and authority derived therefrom with respect to the Waterfront Parks and Park Improvements, and accepts jurisdictional control of the Waterfront Parks and Park Improvements in phases, to facilitate uniform management of the Waterfront Parks and Park Improvements by the City.

**SECTION 3.** The City Council hereby authorizes the City Administrator or his or her designee, to effectuate such permanent relinquishment of the Port Area and accept jurisdictional control of each phase as evidenced by (a) a termination by the Port of the Open Space Ground Lease and (b) the acceptance by the City of the conveyance by deed of the Park Improvements ("Park Improvements Deed"), or such other comparable documents, with respect to such phase, which acceptance may be in one or more transactions.

**SECTION 4.** The City Council hereby authorizes the City Administrator or his or her designee, without returning to the City Council, to (a) negotiate the form of Park Improvements Deed, consistent with this Ordinance, and to execute the acceptance of the Park Improvements Deed for each phase when all conditions precedent for the transfer of each Waterfront Park pursuant to the Development Agreement have been satisfied, and (b) negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the transfer of each Waterfront Park and related Park Improvements in order to consummate the transactions in accordance with this Ordinance and the Development Agreement, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

**SECTION 5.** All documents associated with the transfers of the Waterfront Parks and the Park Improvements shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City and shall be placed on file with the City Clerk.

**SECTION 6.** 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).

**SECTION 7.** The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

**SECTION 8.** 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 9.** 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.

**OCT 06 2020**

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

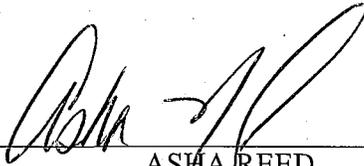
AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASIA REED

Acting City Clerk and Clerk of the Council of the City of Oakland, California

**Introduction Date**

**SEP 15 2020**

Date of Attestation:

*October 15, 2020*

## NOTICE AND DIGEST

**ORDINANCE (1) APPROVING AND AUTHORIZING 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) AUTHORIZING THE CITY ADMINISTRATOR TO EFFECTUATE SUCH ACCEPTANCE FOR EACH PHASE**

This Ordinance authorizes the acceptance by the City Council of the City of Oakland (City) to alter the Port Area and accept jurisdictional control over certain waterfront parks and related improvements being developed in phases by the Zarsion-OHP I, LLC (Developer) in Brooklyn Basin (formerly known as the Oak to Ninth project), in accordance with a Development Agreement between Developer and the City. The Ordinance also authorized the City Administrator to effectuate such acceptance of each phase.



**Parks Phases**

- Phase 1
- Phase 2
- Phase 3
- Phase 4
- Phase 1A

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