File No. 120816 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** October 29, 2012

Board of Supervisors Meeting **Date** _____

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Completed by: Alisa Miller **Date** October 26, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Administrative Code - Port Pre-Payment of Jobs-Housing Linkage Program Obligations]

Ordinance amending the San Francisco Administrative Code, by adding Section 61.12, to authorize pre-payment of Jobs-Housing Linkage Program obligations for developments on certain Port lands; and adopting environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.). This determination is on file with the Clerk of the Board of Supervisors in File No. 120816 and is incorporated by reference.

(b) The City imposes a variety of development exactions on land-use development projects, including obligations under the Jobs-Housing Linkage Program (JHLP) described in Planning Code Sections 413 et seq. (JHLP ordinance). Under the JHLP ordinance, JHLP obligations are satisfied by payment of fees to the City's Affordable Housing Fund before a first construction document is issued. Typical economic cycles create volatility in the building and construction industries that has negative impacts on the availability of financing, greatly affecting the viability of a range of development projects. The State of California designated the City, acting through the Port of San Francisco (Port), to act as public trustee of the San Francisco waterfront lands subject to the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act (Stats. 1968, Ch. 1333). As

trustee of public trust lands, the Port strives to redevelop these lands for productive purposes that are consistent with the public trust and applicable land use regulations, including the Port's Waterfront Land Use Plan. These efforts are often frustrated by the high costs of waterfront development: Port lands are predominantly filled tidelands, requiring expensive pile supports to ensure seismic safety; Port lands include numerous historic structures listed on or eligible for listing on the National Register of Historic Places that require costly rehabilitation; some Port lands are brownfields requiring remediation prior to development; and both the McAteer-Petris Act (Gov. Code §§ 66600 et seq.), under which the Bay Conservation and Development Commission regulates shoreline development, and the public trust require high-quality public access to the shoreline in the form of parks and open space. To address the high costs of waterfront development, the Port requires flexible financing strategies to address project costs, including associated development exactions imposed by the City.

The Burton Act and San Francisco Charter Sections B3.581 - B7.305 provide for the San Francisco Port Commission to manage the 7.5 miles of San Francisco's waterfront from Fisherman's Wharf to Pier 98 near India Basin in trust for the people of California. Most of the Port's holdings are subject to land use restrictions under the Burton Act trust and the common law trust for navigation, commerce, and fisheries (public trust).

In Senate Bill 815 (stats. 2007, ch. 660) (SB 815), the State Legislature found that certain seawall lots under the Port's jurisdiction were no longer useful to the public trust and authorized the Port to lease them for non-trust purposes (such as housing, which is not a permitted trust use) for periods of not more than 75 years at fair market value to generate revenues for the Port's Harbor Fund. SB 815 applies to four seawall lots south of Market Street, including Seawall Lot 337 in Mission Bay (SB 815 parcels). All of the SB 815 parcels are currently used for surface parking, a land use that does not represent the highest and best use of waterfront property.

Assemblymember Ammiano is sponsoring Assembly Bill 2649 (AB 2649), which, if passed, would authorize the Port to lease Seawall Lot 322-1 (bounded by Broadway, Front, and Vallejo Streets) for non-trust purposes on the same conditions as the SB 815 parcels, based upon findings that it is no longer useful to the public trust, except that the Port would be authorized to enter into a lease for affordable housing at below-market rents if the Port receives fair market value by other means. AB 2649 would also authorize the Port to lease other seawall lots for non-trust purposes if the State Lands Commission makes findings that they are no longer useful for trust purposes.

This ordinance would provide one mechanism for the Port to receive fair market value if it enters into below-market leases of non-trust Port lands to the Mayor's Office of Housing (MOH) for affordable housing by authorizing the Port and MOH to enter into a memorandum of understanding (MOU) providing for the Port to receive credits equal to the difference in the value of a Port below-market lease to MOH and the fair market value of the leased land. The Port would be authorized to use these credits the prepay JHLP obligations for future private development on Port lands.

The Port's situation is unique in San Francisco, and thus the flexibility provided by this modification to the Jobs-Housing Linkage Program is expressly tailored for application to Port lands. The JHLP is otherwise intended to remain as a program that generates development fees for the Citywide Affordable Housing Fund. This ordinance should not be construed as an overall change in purpose or application of satisfying the JHLP fee obligations for development elsewhere throughout the City.

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Section 2. The San Francisco Administrative Code is hereby amended by adding Section 61.12, to read as follows:

SEC. 61.12. PORT PRE-PAYMENT OF JOBS-HOUSING LINKAGE PROGRAM OBLIGATIONS.

(a) ***Purpose****. The Jobs Housing Linkage Program, Planning Code Sections 413, et seq. ("JHLP",) imposes a fee on certain types of development in the City. By enacting this ordinance, the City intends to: create a mechanism to provide valuable resources for affordable housing in the City; give the Port flexibility in structuring JHLP obligations to mitigate financial hardships caused by economic cycles; and improve the financial feasibility of Port development.*

(b) ***Application****. This section applies to any development on land under Port jurisdiction that is not subject to land use restrictions under the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act (Stats 1968, Ch 1333) ("non-trust Port lands"), for which the City would impose JHLP obligations.*

(c) ***Authorization to Create JHLP Credits Through MOU.***

(1) The Port and MOH are authorized to establish a system of credits by which the Port will "pre-pay" JHLP obligations that would otherwise be payable for future development on Port lands by the following procedures.

(A) The Port may initiate the process by designating a site or sites on non-trust Port lands to the Mayor's Office of Housing ("MOH") or its designee that the Port believes would be suitable for development of affordable housing (each, an "affordable housing site") and that the Port would offer to ground lease to MOH at a negotiated below-market rental rate. After the Port's designation and proposed site dedication to MOH, the Port and MOH will confer and agree on due diligence measures customarily and ordinarily incurred in a potential buyer's decision whether to purchase property, which MOH will use to evaluate the site's suitability for affordable housing development and determine whether the Port's offered site will be a priority site for development of

affordable housing assisted by MOH. MOH shall only accept a site that would result in the development of 50 affordable units or more. In determining a site's suitability for affordable housing, MOH shall solicit and consider comments from the public and any other interested parties. MOH shall consider, among other things, whether the site is suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria.

(B) If MOH agrees that any designated site is suitable for development of affordable housing, and MOH and the Port agree on the below-market rental rate that would apply to the non-trust Port Lands, the Port will be entitled to "JHLP Credits" determined as provided in this Section. The Port and MOH will request jointly that the City's Director of Real Estate engage a real estate professional, at the Port's expense, to conduct an analysis of both the fair market rental value of the affordable housing site and the below-market rental value of the affordable housing site according to joint instructions from the Port and MOH, which shall specify that each of the consultant's value conclusions must take into account and make appropriate deductions for: (1) customary and ordinary due diligence costs as agreed by MOH and the Port in accordance with Subsection (c); and (2) the cost of review under the California Environmental Quality Act for the transfer by ground lease, but not the specific development program for the site. The amount of JHLP Credits that the Port will receive to offset anticipated JHLP obligations on future development of Port lands will be equal to the difference between the fair market rental value conclusion and the below-market rental value conclusion of the affordable housing site, as determined by the consultant, based on the JHLP requirements and schedule of in-lieu fees in effect on the date the Port and MOH enter into ground lease or other agreement for the non-trust Port land to be used as an affordable housing site.

(C) In any case under which the affordable housing site is offered to MOH through a sublease to MOH of a portion of property held by a third party developer under a ground lease from the Port, MOH shall be entitled to recover from the developer all administrative costs MOH

incurs, including attorneys' and consultants' fees and costs, in conducting its due diligence on the suitability of the proffered site for affordable housing.

(D) The Port may allocate the JHLP Credits among the types of uses then subject to JHLP obligations. The Port will calculate the square footage of each type of anticipated development on non-trust Port lands that would be prepaid by the JHLP Credits and provide a schedule of the allocated JHLP Credits to MOH. The following example shows a hypothetical allocation of JHLP Credits in the amount of $1 million allocated to offset JHLP obligations for development of new uses on Port lands based on JHLP fees in effect in May 2012.

Use	***2012 Fee per Gross Square Foot ($)***	***Anticipated Development (GSF)***	***JHLP Credit Applied ($)***
Integrated PDR	*15.69*	*10,000*	*156,900*
Institutional	*0.0*	*25,000*	*0*
Office	*19.96*	*15,000*	*299,400*
R&D	*13.30*	*30,000*	*399,000*
Small Enterprise Workspace	*15.69*	*9,280*	*145,600*

(2) The Port and MOH are authorized to enter into a memorandum of understanding that provides for the Port to satisfy all or part of the JHLP obligations on any portion of development on non-trust Port lands through the use of JHLP Credits ("JHLP MOU"). The JHLP MOU shall reflect the establishment of JHLP Credits and develop accounting procedures to establish the basis for calculating JHLP Credits, including the assumptions regarding the uses and amount of development, and the value of the JHLP Credits credited to the Port's account. The Director of MOH and the Port Commission must each approve the execution of a JHLP MOU documenting the amount, form, and other terms for the Port's pre-payment of JHLP obligations for development on non-trust Port lands, including the manner in which terms applicable to any later JHLP MOUs between the Port and MOH

will be applied. Following approval by the Mayor and the Board of Supervisors under Charter Section B7.320, the JHLP MOU will be recorded in the Official Records. The JHLP MOU also may provide for the attachment of schedules to reflect allocations of JHLP Credits arising from specific affordable housing sites subject to the JHLP MOU, which the Port and MOH are authorized to enter into without further approval by the Mayor and the Board of Supervisors. The recorded JHLP MOU, including any attached or amended schedules, will be conclusive evidence that JHLP obligations have been satisfied fully for any future applicable development on non-trust Port lands as provided in the JHLP MOU.

(3) MOH and the Port shall forward a copy of the recorded JHLP MOU and any schedules to the Development Fee Collection Unit at the Department of Building Inspection. The Development Fee Collection Unit will waive the imposition of any additional JHLP obligations for actual development up to the amount of the Port's JHLP Credits. A development for which the Port has pre-paid JHLP obligations in accordance with a JHLP MOU meeting all the conditions of this Section will be exempt from any other procedures for the imposition and enforcement of JHLP exactions under the Municipal Code, as amended from time to time.

(d) Neither this Section nor the JHLP MOU shall:

(1) preclude any development on land under Port jurisdiction from satisfying the obligations of the JHLP, in part or in whole, through the mechanisms provided in the JHLP, Planning Code Sections 413 et seq., or any successor provisions; or

(2) excuse the Port from compliance with Charter Section B7.320, when applicable to any JHLP MOU regarding JHLP Credits allocated to the Port under this Section; or

(3) excuse the Port from compliance with Charter Section 9.118, when applicable to any Port lease to MOH or its designee for affordable housing development as provided in this Section.

Section 3. Effective Date. This ordinance shall become effective 30 days after the date of passage.

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

By: _____
JOANNE SAKAI
Deputy City Attorney

LEGISLATIVE DIGEST

[Administrative Code - Port Pre-Payment of Jobs - Housing Linkage Program Obligations]

Ordinance amending the San Francisco Administrative Code, by adding Section 61.12, to authorize pre-payment of Jobs-Housing Linkage Program obligations for developments on certain Port lands; and adopting environmental findings.

Existing Law

The Jobs-Housing Linkage Program (JHLP) described in Planning Code sections 413 et seq. provides for the imposition of fees on development of most types of commercial development to offset the new demand for affordable housing produced by new employment. Current fees range from $13.30 per gross square foot (gsf) for new research and development space to $19.96/gsf for new office space.

The Burton Act (stats. 1968, ch. 1333) and San Francisco Charter Sections B3.581 - B7.305 provide for the San Francisco Port Commission to manage the 7.5 miles of San Francisco's waterfront from Fisherman's Wharf to Pier 98 near India Basin in trust for the people of California. Most of the Port's holdings are subject to land use restrictions under the Burton Act trust and the common law trust for navigation, commerce, and fisheries (public trust). Private development on Port property is subject to impact fees prescribed by the Planning Code, including JHLP fees.

In Senate Bill 815 (stats. 2007, ch. 660) (SB 815), the State Legislature found that certain seawall lots under the Port's jurisdiction were no longer useful to the public trust and authorized the Port to lease them for non-trust purposes (such as housing, which is not a permitted trust use) for periods of not more than 75 years at fair market value to generate revenues for the Port's Harbor Fund. SB 815 applies to three triangular-shaped parcels south of Market Street and a 16-acre parcel known as Seawall Lot 337 in Mission Bay (SB 815 parcels). All of the SB 815 parcels are currently used for surface parking, a land use that does not represent the highest and best use of waterfront property.

Amendments to Current Law

Assemblymember Ammiano is sponsoring Assembly Bill 2649 (AB 2649), which was passed unanimously by the Assembly and is awaiting assignment to committee in the Senate. If passed, AB 2649, based upon findings that Seawall Lot 322-1 (bounded by Broadway, Front, and Vallejo Streets) is no longer useful to the public trust, would authorize the Port to lease it for non-trust purposes on the same conditions as the SB 815 parcels, except that the Port would be authorized to enter into a lease for affordable housing at below-market rents if the Port receives fair market value by other means. AB 2649 would also authorize the Port to lease other seawall lots for non-trust purposes if the State Lands Commission makes findings

that they are no longer useful for trust purposes. This ordinance would provide one mechanism for the Port to receive fair market value if it enters into below-market leases of non-trust Port lands to the Mayor's Office of Housing (MOH) for affordable housing.

This ordinance would authorize the Port and MOH to enter into a memorandum of understanding (MOU) providing for the Port to receive credits equal to the difference in the value of a Port below-market lease to MOH and the fair market value of the leased land. The Port would be authorized to use these credits the prepay JHLP obligations for future private development on Port lands. By enacting this ordinance, the City would: create a mechanism to provide valuable resources for affordable housing in the City; give the Port flexibility in structuring JHLP obligations to mitigate financial hardships caused by economic cycles; and improve the financial feasibility of Port development.

Background Information

As trustee of public trust lands, the Port strives to redevelop lands under its jurisdiction for productive purposes that are consistent with the public trust and applicable land use regulations, including the Port's Waterfront Land Use Plan. These efforts are often frustrated by the high costs of waterfront development: Port lands are predominantly filled tidelands, requiring expensive pile supports to ensure seismic safety; Port lands include numerous historic structures listed on or eligible for listing on the National Register of Historic Places that require costly rehabilitation; some Port lands are brownfields requiring remediation prior to development; and both the public trust and the McAteer-Petris Act (Gov. Code §§ 66600 et seq.), under which the Bay Conservation and Development Commission regulates shoreline development, promote high-quality public access to the shoreline in the form of parks and open space. To address the high costs of waterfront development, the Port requires flexible financing strategies to address project costs, including associated development exactions imposed by the City.

Some Port property under the Port's jurisdiction, including the SB 815 parcels, are no longer needed for trust purposes. Affordable housing would be an appropriate use of these lands. However, SB 815 requires fair market rents for leases of SB 815 parcels, which would make development of affordable housing on these lands infeasible. If the Legislature passes AB 2649, the Port will have the authority, with State Lands Commission concurrence, to offer certain Port lands at below-market rents for affordable housing purposes, provided the Port obtains total consideration equal to fair market value.

This ordinance would provide one mechanism needed to meet the requirements of AB 2649, if passed, by permitting the Port to offer lands that are no longer needed for public trust purposes at or below fair market value to MOH for development of affordable housing, while receiving credits up to the market value of the land to offset JHLP fees owed on these parcels or elsewhere on Port property.

BOARD of SUPERVISORS

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TDD/TTY No. 554-5227

August 10, 2012

File No. 120816

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On July 31, 2012, Supervisor Kim introduced the following proposed legislation:

File No. 120816

Ordinance amending the San Francisco Administrative Code, by adding Section 61.12, to authorize pre-payment of Jobs-Housing Linkage Program obligations for developments on certain Port lands; and adopting environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Non physical exemption
CEQA Section 15060(c)(2)
August 10, 2012
JOY NAVARRETE

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee: Land Use

An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee:

☐ 4. Request for letter beginning "Supervisor _____ inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. _____ from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No.

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Supervisor Kim

Subject:

Administrative Code-Port Pre-payment of Jobs-Housing Linkage Program Obligations

The text is listed below or attached:

See attached

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

120816