

BOARD of SUPERVISORS



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November 13, 2020

File No. 201229

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue
San Francisco, CA 94103

Dear Ms. Gibson:

On October 27, 2020, Supervisor Peskin introduced the following legislation:

File No. 201229

Resolution approving a management agreement with the nonprofit Owners' Association for administration/management of the established property-based Community Benefit District known as the "Union Square Business Improvement District," pursuant to California Streets and Highways Code, Section 36651, for a period commencing upon Board approval, through June 30, 2035.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

By: John Carroll, Assistant Clerk
Government Audit and Oversight Committee

Attachment

c: Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planner
Don Lewis, Environmental Planner

1 [Management Agreement - Owners' Association for Administration/Management -
2 Fisherman's Wharf Landside Community Benefit District]

3 **Resolution approving a management agreement with the nonprofit Owners'**
4 **Association for administration/management of the established property-based**
5 **Community Benefit District known as the "Union Square Business Improvement**
6 **District," pursuant to California Streets and Highways Code, Section 36651, for a period**
7 **commencing upon Board approval, through June 30, 2035.**

8
9 WHEREAS, On May 19, 2020, acting pursuant to Article XIID of the California
10 Constitution, Section 53753 of the California Government Code, and the Property and
11 Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets and
12 Highways Code, commencing with Section 36600), as augmented by Article 15 of the San
13 Francisco Business and Tax Regulations Code, the Board of Supervisors adopted Resolution
14 No. 216-20 ("Resolution of Intention") declaring the Board's intention to renew and expand the
15 property-based special assessment district to be known as the Fisherman's Wharf Landside
16 Community Benefit District; and declaring the Board's intention to levy assessments on
17 parcels to be included within the district, setting the public hearing, initiating mail ballot
18 majority protest proceedings, approving the management district plan entitled "Fisherman's
19 Wharf Community Benefit District Management Plan" (the "Management District Plan" or
20 "Plan"), making various findings, and taking other legislative actions required to renew and
21 expand the proposed district and levy the proposed assessments (Board File No. 200380);
22 and

23 WHEREAS, On July 14, 2020, acting pursuant to the aforementioned legal authorities,
24 the Board of Supervisors adopted Resolution No. 323-20 ("Resolution to Establish," Board
25 File No. 200528), establishing (renewing and expanding) the property-based Community

1 Benefit District designated as the "Fisherman's Wharf Landside Community Benefit District"
2 and levying multi-year special assessments on Identified Parcels (as defined in Section
3 53750(g) of the Government Code) included within the District (the "Assessments"); and the
4 Controller's designation for the Assessments for the Fisherman's Wharf Landside Community
5 Benefit District is Special Assessment No. 64; and

6 WHEREAS, Pursuant to the aforementioned legal authorities and the Resolution to
7 Establish, the Assessments may only be used to fund property-related services,
8 "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and
9 "Activities" (as defined in Section 36606 of the Streets and Highways Code) within the District
10 in accordance with the Management District Plan (collectively, such authorized services,
11 improvements and activities are referred to here as "District Programs"); and

12 WHEREAS, The District is not a governmental, corporate or separate legal entity, but is
13 a geographic area containing all of the Identified Parcels subject to the Assessments for
14 District Programs described in the Plan and included in the annual budgets submitted to and
15 approved by the Board of Supervisors; the annual budget for District Programs for the first
16 year of operations is set forth in the Plan, and for subsequent years, shall be set forth in the
17 Annual Reports submitted to the Board of Supervisors as required by Section 36650 of the
18 Streets and Highways Code; and

19 WHEREAS, Pursuant to the Resolution to Establish and Sections 36612 and 36650 of
20 the Streets and Highways Code, the Board of Supervisors may contract with a private
21 nonprofit entity referred to as an "Owners' Association" to administer the District Programs.
22 An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity.
23 An Owners' Association is a private entity and may not be considered a public entity for any
24 purpose, nor may its board members or staff be considered to be public officials for any
25 purpose; provided, however, that an Owner's Association must comply with the Ralph M.

1 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
2 Government Code) at all times when its board of directors or any committee thereof hears,
3 considers or deliberates on matters concerning the District, and must comply with the
4 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
5 Title 1 of the Government Code) for purposes of providing public access to records relating to
6 the District; and

7 WHEREAS, An Owners' Association is obligated to hold in trust all funds it receives
8 from the City that are derived from the City's levy and collection of the Assessments, and to
9 use such funds exclusively for the purposes of implementing the Management District Plan
10 and administering, managing and providing District Programs set forth in the Plan, Resolution
11 to Establish, and annual budgets submitted by the Owners' Association and approved by the
12 Board of Supervisors; and

13 WHEREAS, Pursuant to the Resolution to Establish, the Office of Economic and
14 Workforce Development is the City agency responsible for coordination between the City and
15 the Owners' Association for the District; and

16 WHEREAS, The Office of Economic and Workforce Development has negotiated an
17 agreement with the California nonprofit corporation Fisherman's Wharf Association of San
18 Francisco to, in good faith and with diligence as the Owners' Association for the District,
19 develop, implement, direct, manage, administer, operate and ensure the timely provision of
20 the District Programs ("Management Agreement" or "Agreement"); the Management
21 Agreement is on file with the Clerk of the Board of Supervisors in File No. 201229, which is
22 hereby declared to be a part of this Resolution as if set forth fully herein; and

23 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
24 the Resolution to Establish and the express terms of the Management Agreement, the
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1 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
2 Resolution; and

3 WHEREAS, It is in the best interest of the City and the property owners within the
4 District for the City to enter into the Management Agreement with the Fisherman's Wharf
5 Association of San Francisco, according to the terms and conditions set forth therein; and

6 WHEREAS, The Planning Department has determined that the actions contemplated in
7 this Resolution comply with the California Environmental Quality Act (California Public
8 Resources Code Sections 21000 et seq.); said determination is on file with the Clerk of the
9 Board of Supervisors in File No. _____ and is incorporated herein by reference;
10 now, therefore, be it

11 RESOLVED, That the Board of Supervisors declares as follows:

12 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Office of Economic
13 and Workforce Development is duly authorized to execute the Management Agreement on
14 behalf of the City and County of San Francisco.

15 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
16 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
17 File No. 201229, which is hereby declared to be a part of this Resolution as if set forth fully
18 herein.

19 Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
20 The Office of Economic and Workforce Development, Controller and all other Departments,
21 City Officers and Employees are authorized to take all actions, make determinations, exercise
22 discretion, grant or deny approval, and otherwise take all reasonable steps necessary for full
23 performance of the Management Agreement on behalf of the City and County of San
24 Francisco according to its terms.

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1 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
2 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
3 Board, the Office of Economic and Workforce Development may execute amendments to the
4 Agreement on behalf of the City and County of San Francisco, including to any of its exhibits,
5 that the Office of Economic and Workforce Development determines, in consultation with the
6 City Attorney, are in the best interests of the City and do not materially increase the
7 obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of
8 the District of this Resolution, and are consistent with the Management District Plan,
9 Resolution to Establish, official City policies and applicable law.

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