

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Sub-Committee
FROM: Budget and Legislative Analyst 
SUBJECT: April 17, 2013 Budget and Finance Sub-Committee Meeting

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Item 2
File 13-0131

Department:
 Department of Public Health (DPH)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend Section 1.10 of the Administrative Code to (1) increase and streamline fees charged by the County Agricultural Commissioner under the Department of Public Health's (DPH) Agriculture Program for inspection and certification of agricultural products sent to other States and foreign countries, (2) codify new State Certificate fees and existing Federal Certificate fees that the Agricultural Commissioner is required to collect on behalf of the California Department of Food and Agriculture and the U.S. Department of Agriculture (USDA), and (3) authorize the Controller to adjust agricultural product inspection and certification fees annually, without further action by the Board of Supervisors, to ensure that the Program fully recovers the costs of operation for the upcoming fiscal year.

Key Points

- In order to meet the plant quarantine requirements of importing States and countries, exporters of plants and unprocessed plant products are required to obtain Federal and State Phytosanitary Certificates, certifying these products for export. Under a Memorandum of Understanding between the U.S. Department of Agriculture (USDA) and the California Department of Food and Agriculture, the Agricultural Commissioner of each county in California performs inspections, issues Phytosanitary Certificates, and charges exporters a fee to recover the costs of inspection and certification.
- The proposed ordinance would increase and streamline fees charged by the County Agricultural Commissioner for inspection and certification of agricultural products by replacing the existing 5-tier fee with a single fee of \$40.
- The proposed ordinance would authorize the Controller to adjust agricultural product inspection and certification fees annually, without further action by the Board of Supervisors, to ensure that the Program fully recovers the costs of operation for the upcoming fiscal year. Under the proposed ordinance, future changes to the agricultural product inspection and certification fees would be posted on the DPH website.

Fiscal Impact

- According to estimates provided by the County Agricultural Commissioner, the proposed ordinance would increase the annual revenues realized from agricultural product inspection and certification fees by \$1,313, from \$20,887 to \$22,200.
- If the proposed single fee of \$40 had been in effect for all of FY 2012-13, the proposed fee would have resulted in 93.4 percent recovery of the County Agricultural Commissioner's costs to inspect and certify agricultural products for export. However, Mr. Miguel Monroy, San Francisco's Agricultural Commissioner, advises that the proposed fee of \$40 is appropriate given (1) the uncertainty of how many inspections will be requested in the future and the hours required to perform those inspections, and (2) the Controller's authority to adjust the fee as needed to recover costs in future years, without further action by the Board of Supervisors, which would be authorized under the proposed ordinance.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with Section 2.105 of the City's Charter, amendments to the Administrative Code are subject to approval by ordinance of the Board of Supervisors.

Background

In order to meet the plant quarantine requirements of importing states and countries, exporters of plants and unprocessed plant products are required to obtain Federal and State Phytosanitary Certificates,¹ certifying these products for export. Under a Memorandum of Understanding between the U.S. Department of Agriculture (USDA) and the California Department of Food and Agriculture, the Agricultural Commissioner of each County in California (1) performs inspections to ensure that agricultural products meet plant quarantine requirements, such as having no visible traces of dirt on them, (2) issues Phytosanitary Certificates, and (3) charges exporters a fee to recover the costs of inspection.

According to Mr. Miguel Monroy, San Francisco's Agricultural Commissioner, the Department of Public Health (DPH) Agriculture Program performs between 500 and 600 inspections and certifications for approximately 25 to 30 exporters of agricultural products each year. Mr. Monroy advises that inspections are usually performed where the products are prepared for shipping and thus requires inspectors to travel to different shipping locations. Under the existing Administrative Code Section 1.10, exporters are charged a fee on a per shipment basis, which, as shown in Table 2 below, varies according to the number of packages in a shipment.

As shown in Table 1 below, annual revenues realized from agricultural product inspection and certification fees charged by the County Agricultural Commissioner recovered approximately 95.7 percent of the County Agricultural Commissioner's costs in FY 2010-11, and approximately 73.5 percent of the County Agricultural Commissioner's costs in FY 2011-12. Mr. Monroy advises that the Program's costs were higher in FY 2011-12 due to the hiring and training of a new inspector, and that the Program's costs for FY 2012-13 are expected to return to previous levels.

Table 1: Agricultural Product Inspection and Certification Cost Recovery

Year	Certificates Issued	Hours Expended	Estimated Cost	Actual Revenues	% of Cost Recovered
FY 10-11	597	415.5	\$19,333	\$18,494	95.7%
FY 11-12	555	551.5	\$28,416	\$20,887	73.5%

Source: Department of Public Health Agriculture Program

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Section 1.10 of the Administrative Code to (1) increase and streamline fees charged by the County Agricultural Commissioner under DPH's Agriculture Program for inspection and certification of agricultural products sent to other States and foreign

¹ Phytosanitary Certificates are issued to indicate that consignments of plants, unprocessed plants products or other regulated articles meet specified phytosanitary import requirements.

countries, (2) codify new State Certificate fees and existing Federal Certificate fees that the Agricultural Commissioner is required to collect on behalf of the California Department of Food and Agriculture and the USDA, and (3) authorize the Controller to adjust agricultural product inspection and certification fees annually, without further action by the Board of Supervisors, to ensure that the Program fully recovers the costs of operation for the upcoming fiscal year.

Inspection and Certification Fees

The proposed ordinance would increase and streamline fees charged by the County Agricultural Commissioner for inspection and certification of agricultural products by replacing the 5-tier fee schedule, shown in Table 2 below, with a single fee of \$40. According to Mr. Monroy, the current fee schedule is unnecessarily difficult for inspectors and exporters to calculate, and does not accurately reflect the actual costs of performing inspections. Mr. Monroy advises that due to the process of inspecting a small number of randomly selected packages out of an entire shipment, variation in the total number of packages in a shipment has a negligible effect on the time required to perform inspections. In addition, as shown in Table 2 below, under the current fee schedule, exporters shipping between 501 and 1,000 packages pay a smaller inspection and certification fee than exporters shipping between 201 and 500 packages.

Table 2: Current and Proposed Agricultural Product Inspection and Certification Fees

Number of Packages in Shipment	Current Fees	Proposed Fee
1 to 100	\$29	\$40
101 to 200	\$35	\$40
201 to 500	\$40	\$40
501 to 1,000	\$35 plus 1 cent per package over 500 packages	\$40
Over 1,000	\$40 plus one-half cent per package over 1,000 packages	\$40

The proposed ordinance would also increase the fee for each Certificate of Fumigation from \$30 to \$40. Mr. Monroy advises that the Agriculture Program has not needed to issue a Certificate of Fumigation during his four years as County Agricultural Commissioner. Therefore, increasing the fee for Certificates of Fumigation would have negligible fiscal impact.

State and Federal Certificate Fees

The proposed ordinance would codify in Section 1.10 of the City's Administrative Code new State Phytosanitary Certificate fees and existing Federal Phytosanitary Certificate fees that the County Agricultural Commissioner is required to collect on behalf of the California Department of Food and Agriculture and the USDA. The California Code of Regulations sets these fees at \$5.30 per Certificate.

Exporters who have an account with the USDA Phytosanitary Certificate Tracking System make direct electronic payments to pay State and Federal Certificate fees. For exporters who do not have an account with the USDA Phytosanitary Certificate Tracking System, the County Agricultural Commissioner is required to collect the State and Federal Certificate fees and remit them to the California Department of Food and Agriculture and the USDA. However, Mr. Monroy advises that all exporters currently doing business in San Francisco have accounts with the USDA Phytosanitary Certificate Tracking System; therefore the County Agricultural

Commissioner generally does not have to administer the collection and remittance of the State and Federal Certificate fees.

According to the City Attorney's Office, these State and Federal Certificate fees are required regardless of whether they are included in San Francisco's Administrative Code. Ms. Dario Elizondo of the City Attorney's Office advises that codifying these State and Federal Certificate fees in the City's Administrative Code would further clarify to exporters the role of the County Agricultural Commissioner in collecting such fees.

As discussed above, the proposed ordinance would authorize the Controller to adjust agricultural product inspection and certification fees annually, without further action by the Board of Supervisors, to ensure that the Program fully recovers the costs of operation for the upcoming fiscal year. Under the proposed ordinance, future changes to the agricultural product inspection and certification fees would be posted on the DPH website.

FISCAL IMPACT

The proposed ordinance would increase and streamline fees charged by the County Agricultural Commissioner for inspection and certification of agricultural products by replacing the 5-tier fee schedule, shown in Table 2 above, with a single fee of \$40.

According to estimates provided by the County Agricultural Commissioner, the proposed ordinance would increase the annual revenues realized from agricultural product inspection and certification fees by \$1,313, from \$20,887 to \$22,200, as shown in Table 3 below.

Table 3: Estimated Revenues under Current Fees versus Proposed Single Fee of \$40

	Estimated Certificates Issued	Estimated Hours Expended	Estimated Cost (FY 12-13)	Estimated Revenues	% of Cost Recovered
Current Fees	555	425	\$23,761	\$20,887	87.9%
Proposed Fee	555	425	\$23,761	\$22,200	93.4%

Source: Department of Public Health Agriculture Program

If the proposed single fee of \$40 had been in effect for all of FY 2012-13, the proposed fee would have resulted in 93.4 percent recovery of the County Agricultural Commissioner's costs to inspect and certify agricultural products for export. However, Mr. Monroy advises that the proposed fee of \$40 is appropriate given (1) the uncertainty of how many inspections will be requested in the future and the hours required to perform those inspections, and (2) the Controller's authority to adjust the fee as needed to recover costs in future years, without further action by the Board of Supervisors, which would be authorized under the proposed ordinance.

RECOMMENDATION

Approve the proposed ordinance.

Item 3**File 13-0132****Department:**

Department of Public Health (DPH)

EXECUTIVE SUMMARY**Legislative Objectives**

- The proposed ordinance would amend Section 1.13-5 of the Administrative Code to (1) increase annual registration fees charged by the County Sealer of Weights and Measures to the new not-to-exceed amounts authorized by the State for the inspection and testing of weighing and measuring devices used for commercial purposes by retail businesses located in San Francisco, and (2) codify new State administrative fees that the County Sealer of Weights and Measures is required to collect on behalf of the California Department of Food and Agriculture.

Key Points

- The County Sealer of Weights and Measures is responsible for consumer and merchant protection through the regulation of all weighing and measuring devices used in commercial transactions in San Francisco.
- Section 1.13-5 of the City's Administrative Code requires all such devices to be registered annually with the County Sealer of Weights and Measures and authorizes the County Sealer to charge businesses a registration fee to recover the costs of inspecting and testing such devices.
- Prior to January 1, 2013, San Francisco's Weights and Measures registration fees were set to the not-to-exceed amounts allowed under State law; however, effective January 1, 2013, the State Legislature increased the not-to-exceed amounts for certain types of devices and introduced new State administrative fees that County Sealers are required to collect and remit to the California Department of Food and Agriculture.
- The proposed ordinance would therefore increase annual registration fees charged by the County Sealer of Weights and Measures to the new not-to-exceed amounts for certain types of devices, and would codify the new State administrative fees that the County Sealer of Weights and Measures is required to collect and remit to the California Department of Food and Agriculture.

Fiscal Impact

- The proposed ordinance would increase the estimated annual revenues realized from Weights and Measures registration fees by \$29,573, from \$489,547 to \$519,120. The proposed registration fees would increase the recovery of program costs from 65.0 percent under the current registration fees to 68.9 percent under the proposed registration fees.

Policy Consideration

- Because the amounts of the not-to-exceed registration fees are set by the State, the County Sealer of Weights and Measures does not have the flexibility to charge registration fees sufficient to ensure that revenues fully recover the costs of administering the Weights and Measures Program. As such, revenues realized from registration fees historically have not recovered the costs of administering the program.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with Section 2.105 of the City's Charter, amendments to the City's Administrative Code are subject to approval by ordinance of the Board of Supervisors.

Background

The County Sealer of Weights and Measures is responsible for consumer and merchant protection through the regulation of all weighing and measuring devices used in commercial transactions in San Francisco, as required under Section 12210 of the California Business and Professions Code. Each year, the Weights and Measures Program of the Department of Public Health performs inspections and testing on various commercial weighing and measuring devices used by retail businesses, including but not limited to liquefied petroleum gas meters, wholesale and vehicle meters, computing scales, livestock scales, jewelry scales, prescription scales, odometers, and price scanning equipment. According to Mr. Miguel Monroy, San Francisco's Sealer of Weights and Measures, the Weights and Measures Program inspected 10,502 devices at 3,192 registered San Francisco business locations in FY 2011-12.

Section 1.13-5 of the City's Administrative Code requires all such devices to be registered annually with the County Sealer of Weights and Measures and authorizes the County Sealer to charge businesses a registration fee to recover the costs of inspecting and testing such devices. Section 12240 of the California Business and Professions Code establishes not-to-exceed registration fees for various types of weighing and measuring devices, which, by ordinance, the Board of Supervisors may authorize the County Sealer of Weights and Measures to charge registered businesses. Prior to January 1, 2013, San Francisco's Weights and Measures registration fees were set to the not-to-exceed amounts provided under Section 12240 of the California Business and Professions Code; however, effective January 1, 2013, the State increased the not-to-exceed amounts for certain types of weighing and measuring devices. In addition, the State introduced new administrative fees that County Sealers of Weights and Measures are required to collect and remit to the California Department of Food and Agriculture.

As shown in Table 1 below, annual revenues realized from Weights and Measures registration fees recovered approximately 74.2 percent of the County Sealer of Weights and Measures' costs in FY 2010-11, resulting in a needed General Fund expenditure of \$169,388, and approximately 68.4 percent of the County Sealer's costs in FY 2011-12, resulting in a needed General Fund expenditure of \$225,389.

Table 1: County Sealer of Weights and Measures Program Cost and Revenue Data

Year	Devices Registered	Business Locations Registered	Hours Expended	Estimated Cost	Registration Fee Revenues	General Fund Revenues Needed	% of Cost Recovered from Fee Revenues
FY 2010-11	10,225	3,468	6,818	\$656,662	\$487,274	\$169,388	74.2%
FY 2011-12	10,502	3,192	8,868	\$713,511	\$488,122	\$225,389	68.4%

Source: Department of Public Health Weights and Measures Program

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Section 1.13-5 of the Administrative Code to (1) increase annual registration fees charged by the County Sealer of Weights and Measures to the new not-to-exceed amounts authorized by the State for the inspection and testing of weighing and measuring devices used for commercial purposes by retail businesses located in San Francisco, and (2) codify new State administrative fees that the County Sealer of Weights and Measures is required to collect on behalf of the California Department of Food and Agriculture. These annual registration fees will become effective upon approval of the proposed ordinance.¹

The registration fee for the Weights and Measures Program consists of three components: (1) a business location component of \$100 for each registered business location, (2) a device fee component for each registered device within a business location, which varies by type of device, and (3) a new State administrative fee that the County Sealer of Weights and Measures is required to collect and remit to the California Department of Food and Agriculture.

Increases to the Device Fee Component for Certain Types of Devices

The proposed ordinance would increase the device fee component of the registration fee to the new not-to-exceed amounts authorized by the State for certain types of weighing and measuring devices provided under Section 12240 of the California Business and Professions Code as of January 1, 2013, as shown in Table 2 below.

Table 2: Current and Proposed Device Fee Components of Weights and Measures Registration Fees

Type of Device	Current Device Fee Component	Proposed Device Fee Component	Increase	% Increase
Liquefied Petroleum Gas Meter	\$175	\$185	\$10	5.7%
Wholesale Meter	\$25	\$75	\$50	200%
Vehicle Meter	\$25	\$75	\$50	200%
Jewelry and Prescription Scales	\$20	\$80	\$60	300%
Scales ≥ 100 but $\leq 2,000$ Pounds	\$20	\$50	\$30	150%
Odometer (Non-passenger vehicles)	\$20	\$60	\$40	200%
Electric Sub-meter	\$2	\$3	\$1	50%
Vapor Sub-meter	\$2	\$4	\$2	100%

In addition, the proposed ordinance would establish caps on registration fees charged to each business with certain types of devices, which are:

- \$1,000 for businesses charged \$20 per device for the inspection and testing of computing scales with capacities of less than 100 pounds, inclusive of the \$100 business location component; and,

¹ The County Sealer of Weights and Measures collects annual registration fees from the registered businesses between January 1 and March 31; however, for FY 2012-13, the County Sealer of Weights and Measures has postponed the collection of annual registration fees pending approval of the proposed ordinance.

- \$340 for businesses charged \$60 per device for the inspection and testing of odometers, inclusive of the \$100 business location component.

State Administrative Fees

The proposed ordinance would codify, in Section 1.13-5 of the City's Administrative Code, new State administrative fees that the County Sealer of Weights and Measures is required to collect and remit to the California Department of Food and Agriculture. The amounts of these fees are shown in Table 3 below.

Table 3: State Administrative Fees

Type of Device	Administrative Fee
Electric Sub-meter	\$0.10
Water Sub-meter	\$0.10
Vapor Sub-meter	\$0.10
CNG Meter	\$1.10
Fabric, Cordage, Wire Meter	\$1.10
Grease and Lube Meter	\$1.10
Odometer	\$1.10
Retail Motor Fuel Dispenser	\$1.10
Retail Meter	\$1.10
Retail Water Meter	\$1.10
Tank (Liquid Test)	\$1.10
Taximeter	\$1.10
Vehicle Meter	\$1.10
Wholesale Meter	\$1.10
Miscellaneous Measuring Device	\$1.10
Scale < 2,000 Pounds	\$1.10
Liquefied Gas Meter	\$8.00
Scales 2,000 to 10,000 Pounds	\$8.00
Scales > 10,000 Pounds	\$12.00

According to Mr. Monroy, the County Sealer of Weights and Measures is permitted to retain 15 percent of the revenues realized from State administrative fees in order to offset the cost of collecting and remitting the fees to the California Department of Food and Agriculture. According to the City Attorney's Office, the County Sealer of Weights and Measures is required to collect and remit these State administrative fees to the California Department of Food and Agriculture regardless of whether these fees are included in San Francisco's Administrative Code. Ms. Dario Elizondo of the City Attorney's Office advises that codifying these State administrative fees in the City's Administrative Code would further clarify to businesses the role of the County Sealer of Weights and Measures in collecting such fees.

FISCAL IMPACT

According to estimates provided by the County Sealer of Weights and Measures, the proposed ordinance would increase the estimated annual revenues realized from registration fees, charged to retail businesses located in San Francisco for the inspection and testing of weighing and measuring devices, by \$29,573, from \$489,547 to \$519,120, as shown in Table 4 below.

Table 4: County Sealer of Weights and Measures Estimated Annual Program Costs and Revenues under Current versus Proposed Registration Fees

	Hours Expended	Estimated Cost	Estimated Annual Registration Fee Revenues ²	Estimated General Fund Revenues Needed	% of Cost Recovered from Fee Revenues
Current Fees	8,868	\$753,188	\$489,547	\$263,641	65.0%
Proposed Fees	8,868	\$753,188	\$519,120	\$234,068	68.9%

As shown in Table 4 above, the proposed registration fees would increase the recovery of program costs from 65.0 percent under the current registration fees to 68.9 percent under the proposed registration fees.

POLICY CONSIDERATION

According to Section 1.13-5 of the City's Administrative Code, the annual registration fees charged by the County Sealer of Weights and Measures are intended to offset the costs of administering the Weight and Measures Program. However, because the amounts of the not-to-exceed registration fees are set by the State, the County Sealer of Weights and Measures does not have the flexibility to charge registration fees sufficient to ensure that revenues fully recover the costs of administering the Weights and Measures Program. According to data provided by the County Sealer of Weights and Measures, the revenues realized from annual registration fees historically have not recovered the costs of administering the Weights and Measures Program, with the exception of FY 2007-08,³ as shown in Table 5 below.

² The estimated registration fee revenues shown in Table 4 include 15 percent of the estimated \$9,501, or \$1,425, the program will receive for collecting the State administrative fees on behalf of the California Department of Food and Agriculture. These State administrative fees are included in the revenue estimates of current and proposed registration fees because the County Sealer of Weights and Measures is required as of January 1, 2013 to collect and remit these fees to the California Department of Food and Agriculture regardless of whether these fees are codified in San Francisco's Administrative Code.

³ Mr. Monroy advises that the registration fee revenues for FY 2007-08 were higher than other years because some registration fee revenues for FY 2006-07 were received in FY 2007-08.

Table 5: Weights and Measures Program Cost Recovery, FY 2004-05 to Present

Year	Estimated Costs	Actual Registration Fee Revenues	Needed General Fund Revenues	% of Cost Recovered from Fee Revenues
FY 2004-05	\$523,240	\$123,967	\$399,273	24%
FY 2005-06	\$478,185	\$300,676	\$177,509	63%
FY 2006-07	\$534,246	\$441,492	\$92,754	83%
FY 2007-08	\$575,385	\$634,979	(\$59,594)	110%
FY 2008-09	\$669,505	\$528,294	\$141,211	79%
FY 2009-10	\$674,265	\$538,494	\$135,771	80%
FY 2010-11	\$656,662	\$487,274	\$169,388	74%
FY 2011-12	\$713,511	\$488,122	\$225,389	68%

RECOMMENDATION

Approve the proposed ordinance.

Item 4 File 13-0133	Department: Department of Public Health (DPH)
EXECUTIVE SUMMARY	
Legislative Objectives	
The proposed ordinance would amend the City's Administrative Code by adding Section 10.100-217 to create a Public Health Solid Waste Penalties Fund for the deposit of civil penalties assessed by the Department of Public Health (DPH) and paid by operators of solid waste facilities for violation of solid waste disposal laws.	
Key Points	
- DPH is authorized by the State to permit and inspect solid waste facilities and abandoned landfills to ensure that all facilities are in compliance with State and City regulations. California Code authorizes DPH, through DPH's Solid Waste Program, to impose a civil penalty on solid waste facility operators if they are in violation of State and City standards. - California Public Resources Code, Section 45010 requires that DPH deposit solid waste penalties into a separate fund, which is not currently the practice. Creating a separate Public Health Solid Waste Penalties Fund would bring DPH into compliance with State law. - DPH plans to use the Public Health Solid Waste Penalties Fund for (a) investigations of solid waste facilities that are operating without a permit and investigations of illegally dumping garbage; (b) investigations of permitted solid waste facilities in the event that the operators of the facilities do not respond to warnings; (c) legal services of the City Attorney's Office and any related legal documents needed to pursue a violator; and (d) cleaning the waste disposal sites that have been abandoned. - The proposed Public Health Solid Waste Penalties Fund would be established as a Category Eight fund which allows for automatic appropriation, the accumulation of interest, and the carry forward of any fund balance. All expenditures from the proposed Public Health Solid Waste Penalties Fund would require approval from the Director of Health, but would not be subject to Board of Supervisors appropriation approval.	
Fiscal Impact	
- Since 2002, DPH's Solid Waste Program has collected a total of \$374,989 from civil penalties paid by solid waste facility operators that were in violation of California Codes, of which none has been expended due to accounting and administrative oversight errors. - DPH has incurred expenditures of less than \$3,000 from 2008 through 2012 for City Attorney solid waste enforcement activities that should have been paid by solid waste penalties but were instead paid by General Fund monies.	
Recommendations	
- Amend the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the proposed Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures to ensure the funds are used in accordance with California Public Resources Code, Section 45010. - Approve the proposed ordinance as amended.	

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

Charter Section 2.105 provides that legislative acts by ordinance be subject to approval by the Board of Supervisors.

In accordance with Administrative Code Section 10.100-1, category eight funds (a) are automatically appropriated for expenditures consistent with the purpose of the fund, (b) accumulate interest provided that the balance in the fund exceeds \$50,000, and (c) allow carry forward of any unexpended and unencumbered balance at the end of the fiscal year to the following fiscal year.

Background

The San Francisco Department of Public Health (DPH) is the local enforcement agency for the California Integrated Waste Management Board whose responsibility is to protect the public's health through the management of California's solid waste. DPH's Environmental Health Division administers a Solid Waste Program that is authorized to issue permits and inspect solid waste facilities¹ and abandoned landfills to ensure that all facilities are in compliance with State and City regulations. Section 45010 of the California Public Resources Code authorizes DPH to impose civil penalties on solid waste facility operators if they are in violation of the standards set forth in Title 14 and 27 of the California Code of Regulations.

There are currently seven permitted solid waste facilities in the City and County of San Francisco and two closed disposal sites that DPH's Solid Waste Program routinely inspects.

Mr. Henry Louie, DPH's Solid Waste Facilities Program Senior Inspector, stated that penalties have been imposed on the solid waste facility operators because the solid waste facility operators were operating without a permit.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the City's Administrative Code by adding Section 10.100-217 to create a Public Health Solid Waste Penalties Fund for the Department of Public Health (DPH) to deposit civil penalties that are imposed on solid waste facility operators for violating State and City solid waste disposal laws. The proposed Public Health Solid Waste Penalties Fund would be established as a Category Eight fund which allows for automatic appropriation, the accumulation of interest, and the carry forward of any fund balance.

¹ According to California Public Resource Code, Division 30, Chapter 2, Section 40200, solid waste facilities are "facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation."

Under the ordinance, the proposed Public Health Solid Waste Penalties Fund would receive all civil penalties imposed on solid waste facility operators that are in violation of State and City solid waste disposal laws. California Public Resources Code, Section 45010 prohibits penalty monies collected through the imposition of civil penalties to be deposited into the City's General Fund and instead requires that the civil penalty revenues be deposited into a separate fund, which is currently not the practice.

Currently, penalties from solid waste violations are deposited into three different accounts which were established to collect administrative, civil and criminal penalties. Because a separate fund has not been created to collect civil penalties, DPH has been out of compliance with the California Public Resources Code, Section 45010 since 1995. In order to comply with the California Public Resources Code, Section 45010, the proposed ordinance would consolidate penalties collected as a result of solid waste violations into one, separate fund, the Public Health Solid Waste Penalties Fund. This Fund would provide for more accurate record keeping for how penalties from solid waste violations are expended.

In accordance with California Public Resources Code, Section 45010, the proposed ordinance restricts the expenditures from the Public Health Solid Waste Penalties Fund to activities that enhance solid waste enforcement, including:

- 1) increasing enforcement programs;
- 2) expanding the agency's enforcement capabilities;
- 3) bringing solid waste facilities into compliance with State and local law; and
- 4) remediating illegal or abandoned solid waste disposal sites.

According to Mr. Louie, DPH's Solid Waste Program plans to use penalty proceeds deposited in the proposed Public Health Solid Waste Penalties Fund for (a) investigations of solid waste facilities that are operating without a permit and investigations of illegally dumping garbage; (b) investigations of permitted solid waste facilities in the event that the operators of the facilities do not respond to warnings; (c) legal services of the City Attorney's Office and any related legal documents needed to pursue a violator; and (d) cleaning the waste disposal sites that have been abandoned.

Pursuant to the proposed ordinance, all expenditures from the proposed Public Health Solid Waste Penalties Fund would require approval from the Director of Health. Such expenditures would not be subject to Board of Supervisors appropriation approval because the fund proceeds under a Category Eight Special Fund are automatically appropriated.

FISCAL IMPACT

The Department of Public Health's Solid Waste Program has collected \$374,989 from civil penalties paid by solid waste facility operators that were in violation of Title 14 and 27 of the California Code of Regulations as shown in Table 1 below. Mr. Rizzolo, the Environmental Health Division's Operations Manager, stated that none of the previous penalties collected have been expended to date due to accounting and administrative oversight errors.

Table 1
Solid Waste Enforcement Deposits from Solid Waste Violators

Date	Company Name	Penalty Amount
November 2, 2002	Advanced Waste	\$1,500
February 24, 2003	Advanced Waste	1,500
March 5, 2003	Advanced Waste	1,000
May 1, 2003	Advanced Waste	1,250
2003*	Ace Hauling	4,000
January 12, 2004	Advanced Waste	1,500
February 5, 2008	City Debris	354,239***
January 1, 2012- October 28, 2012**	Smart Demolition	10,000
	Total	\$374,989

*The exact date is unknown.

** Four installments of \$2,500 each were made over this time period.

***City Debris was operating a solid waste facility without a permit and was in violation of various State and City standards pertaining to solid waste management. DPH took numerous enforcement actions against the owner and operator to secure compliance dating as far back as September 11, 1995. City Debris continually ignored DPH's call for compliance. DPH eventually sued City Debris in Superior Court resulting in a settlement agreement in which DPH was awarded \$354,239.

Mr. Louie noted that the amount of civil penalties that are imposed on a violator is at the discretion of DPH and is based on (1) the severity of the violation, (2) consultation with the City Attorney, (3) the costs involved investigating the violator, and (4) negotiations between DPH and the violator's attorney. The California Public Resources Code, Section 45023 does, however, restrict civil penalties to an amount not-to-exceed \$10,000 for each day the violation occurs.

Mr. Rizzolo estimates that DPH has incurred expenditures of less than \$3,000 from 2008 through 2012 for work order services provided by the City Attorney for solid waste enforcement activities that should have been paid by solid waste penalties but were instead paid by General Fund monies previously appropriated by the Board of Supervisors for DPH's Environmental Health Division's operating budget.

The Budget and Legislative Analyst recommends amending the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures to ensure that the accumulated balance of fund proceeds are used in accordance with California Public Resources Code, Section 45010.

RECOMMENDATIONS

Amend the proposed ordinance to request that DPH submit a written annual report to the Board of Supervisors during the annual budget process for FY 2013-14 and FY 2014-15 that contains the proposed Public Health Solid Waste Penalties Fund balance, accrued interest, and amounts and descriptions of all deposits and expenditures.

Approve the proposed ordinance as amended.

Item 5
File 13-0267

Department:
San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a second amendment to an existing agreement between the SFMTA and the Transbay Joint Powers Authority (TJPA) for continued Transbay Transit Center SFMTA staff support services by (a) increasing the agreement's not-to-exceed amount by \$2,113,000, from \$3,280,677 to \$5,393,677, and (b) extending the term by two years through December 15, 2017, to provide additional utility relocation services, traffic engineering and signal support work, ongoing construction management, construction support and coordination.

Key Points

- In July 2009, the Board of Supervisors approved an agreement between the SFMTA and the TJPA to provide SFMTA staff support services, including design, engineering, administration utility relocation and construction services, for the new Transbay Transit Center for (a) a not-to-exceed \$2,282,979, and (b) a term of approximately five years and four months, extending through December 31, 2014.
- On August 9, 2010, the Board of Supervisors authorized the SFMTA to enter into a first amendment to this agreement to (a) increase the not to exceed authorized amount from \$2,282,979 to \$3,280,677, an increase of \$997,698, and (b) extend the term for approximately one year through December 15, 2015 to provide reimbursements for additional Parking Control Officers to be assigned to the Temporary Transbay Terminal on Howard Street.
- The first phase of the new Transbay Transit Center is currently anticipated to be completed in October of 2017, such that the proposed second amendment will extend the term of the agreement for an additional two years, or from December 16, 2015 through December 15, 2017.

Fiscal Impact

- All SFMTA staff services would be reimbursed by the TJPA based on the SFMTA's actual costs, in accordance with City salary, fringe benefit and overhead rates, subject to change depending on the City's negotiated cost of living and other related increases.
- As of March 7, 2013, 2013, the TJPA has approved \$1,282,125 out of the total \$3,280,677 authorized amount of expenditure reimbursements to the SFMTA for work previously completed, such that there is a \$1,998,552 authorized balance remaining under the existing first amendment agreement.
- The new Transbay Transit Center is a \$4.2 billion project funded with local, regional, state and federal sources, which is being constructed in two phases. The first phase includes completion of the new Transbay Transit Center, bus ramps and bus storage facility, estimated to cost \$1.6 billion, which is fully funded. The second phase includes the 1.3 mile underground extension of Caltrain into the new Transbay Transit Center, which is estimated to cost \$2.6 billion, for which TJPA is currently actively seeking additional sources of funds to complete the project.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

Charter Section 9.118(a) requires that any contracts with anticipated revenues of \$1,000,000 or more or amendments to such contracts, which when entered into had anticipated revenue of \$1,000,000 or more, be subject to approval of the Board of Supervisors.

Background

The Transbay Joint Powers Authority (TJPA) is a five-member public body with representatives from the Mayor's Office, Board of Supervisors, the San Francisco Municipal Transportation Agency (SFMTA), Alameda-Contra Costa Transit District (AC Transit) and the Peninsula Corridor Joint Powers Board (Caltrain). The TJPA is responsible for designing, constructing and operating a new Transbay Transit Center at the site of the previous Transbay Terminal at First and Mission Streets in downtown San Francisco. The new Transbay Transit Center will create a new regional intermodal transportation terminal for connecting 11 transit systems¹, including an extension of the Caltrain rail line underground from its current terminus at 4th and King Streets, and creation of a new neighborhood with residences, offices, parks and shops surrounding the new Transit Center. The first phase of the new Transbay Transit Center is currently anticipated to be completed in October of 2017.

On August 21, 2007, the SFMTA and the TJPA executed an initial agreement for SFMTA staff to provide design and related engineering work to the TJPA to temporarily reroute Muni trolley lines from the existing Transbay Terminal to the new Temporary Transbay Terminal². Under this initial agreement, the SFMTA was reimbursed by the TJPA based on actual SFMTA staff costs up to a maximum of \$811,962 through December 31, 2009.

On July 21, 2009, the Board of Supervisors approved a resolution authorizing the SFMTA to enter into a new agreement with the TJPA to provide additional staff support services for the completion of the Transbay Terminal for (a) a not-to-exceed \$2,282,979, and (b) a term of approximately five years and four months, extending from August 27, 2009 through December 31, 2014 (File 09-0735; Resolution 297-09). This agreement provided SFMTA staff support to the TJPA, including (a) traffic engineering, engineering support services, construction administration and inspection, transit planning, conceptual design development and review for the design and construction of a new Temporary Transbay Terminal, (b) traffic engineering, demolition, sequencing support and construction management services for demolition of the previous Transbay Terminal, and (c) utility relocation, bus storage facility and Transit Center support. This agreement is on a cost-reimbursement basis, such that the TJPA reimburses

¹ The 11 transit systems include AC Transit, BART, Caltrain, Golden Gate Transit, Greyhound, MUNI, SamTrans, WestCAT Lynx, Amtrak, paratransit, and future high-speed rail from Los Angeles.

² The Temporary Transbay Terminal, located on Howard Street between Beale and Main Streets, began operations in August of 2010 to provide temporary bus operations during the demolition and construction of the new Transbay Transit Center.

SFMTA based on individual actual City costs for employee salary, fringe benefits and applicable overhead rates.

On August 9, 2010, the Board of Supervisors approved a resolution authorizing the SFMTA to enter into a first amendment to this agreement to (a) increase the not to exceed authorized amount from \$2,282,979 to \$3,280,677, an increase of \$997,698, and (b) extend the term for approximately one year from January 1, 2015 through December 15, 2015 (File 11-0723; Resolution 326-11). Under the first amendment, the TJPA reimbursed SFMTA for additional Parking Control Officer services to be located during commute hours adjacent to the Temporary Transbay Terminal on Howard Street, between Beale and Main Streets in order to facilitate efficient and unobstructed transit bus access around the Temporary Terminal as well as to and from the Bay Bridge.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a second amendment to the existing agreement between SFMTA and the TJPA related to the Transbay Transit Center in order for the TJPA to pay for SFMTA staff support services by (a) increasing the agreement's not-to-exceed authorized amount by \$2,113,000, from \$3,280,677 to \$5,393,677, and (b) extending the term by two years, through December 15, 2017. The additional SFMTA staff support services to be provided under the proposed second amendment include further utility relocation services, support work related to construction of the new Transbay Transit Center, the bus storage facility³, the temporary bridge⁴ and the elevated bus ramps⁵ as well as additional traffic engineering and signal support work and ongoing construction management and coordination.

All SFMTA staff services would be reimbursed by the TJPA based on the SFMTA's actual costs, in accordance with City salary, fringe benefit and overhead rates, subject to change depending on the City's negotiated cost of living and other related increases.

As noted above, the first phase of the new Transbay Transit Center is currently anticipated to be completed in October of 2017, such that the proposed second amendment will extend the term of the agreement for an additional two years, or from December 16, 2015 through December 15, 2017. Mr. Henry Kim, Project Manager for the SFMTA, advises that the work to be completed under the existing agreement will continue and the proposed agreement will enable the SFMTA to undertake additional tasks as required.

FISCAL IMPACTS

The specific type of services and estimated costs for reimbursement to be made by the TJPA to the SFMTA under the original agreement, first amendment and the proposed second amendment are shown in the following Table.

³ The bus storage facility at Second, Perry, Fourth and Stillman Streets will house AC Transit and Golden Gate Transit buses during weekday off-peak hours.

⁴ The temporary bridge located on Beale Street between Mission and Howard Streets will provide an interim roadway structure during construction of the new Transbay Transit Center below grade concrete box structure.

⁵ Elevated bus ramps will provide direct bus connections between the Transbay Transit Center and the Bay Bridge.

Table: Support Services to be Provided by the SFMTA to the TJPA and Estimated Costs

Types of Services by Project	Original Agreement	First Amendment	Second Amendment
Temporary Terminal			
Project Management, Engineering, & Construction Management	\$270,500		
Department of Parking and Traffic (DPT) Support	376,000		
DPT Signage et. al.	612,479		
Existing Terminal Demolition			
Muni Engineering/ Construction Management	205,000		
DPT Support	29,000		
Utility Relocation			
Project Management and Engineering	55,000		
Traffic Planning & Project Management	110,500		
Duct Bank Planning, Coordination, Engineering, Management Support and Inspections			\$70,000
Transit Center			
Project Management and Engineering	480,000		
Traffic Engineering	90,500		
Traffic Signal Timing, Meters and Shop Support			380,800
Bus Storage Facility			
Traffic Engineering	29,000		
Project Management, Planning and Coordination, Engineering, Construction Management and Inspections			130,000
Engineering and Shop Services			110,000
Miscellaneous Support			
Project Management, Engineering, Construction Management, Inspection	25,000		
Temporary Bridge			
Project Management, Planning, Engineering, Construction Management and Inspections			181,000
Traffic Engineering			128,000
Temporary Terminal Support			
Parking Control Officer Services		\$997,698	
Bus Ramps			
Traffic Engineering			53,000
Shop Services			20,000
On-Going Construction Coordination			
Planning and Project Management Support			300,000
Traffic Engineering and Shop Services			440,200
Signal Work			
Traffic Signals Engineering and Shop Services			300,000
Subtotal	\$2,282,979	\$997,698	\$2,113,000
Total		\$3,280,677	\$5,393,677

As noted above, and as shown in the detailed tasks in the Table above, the existing first amendment agreement is authorized not to exceed \$3,280,677 and extends through December 15, 2015. According to Mr. Kim, as of March 7, 2013, the TJPA has approved \$1,282,125 out of the total \$3,280,677 authorized amount of expenditure reimbursements to the SFMTA for work previously completed, such that there is a \$1,998,552 authorized balance remaining under the existing first amendment agreement.

Mr. Kim advises that the new Transbay Transit Center is a \$4.2 billion project funded with various local, regional, state and federal sources, which is being constructed in two phases. The first phase is estimated to cost approximately \$1.6 billion, which is currently fully funded and includes (a) construction of the Temporary Transbay Terminal to serve passengers while the new Transbay Transit Center is under construction, (b) construction of the above-ground portion of the new intermodal Transbay Transit Center, (c) construction of the elevated bus ramps to provide direct connections between the Bay Bridge and the new Transbay Transit Center, and (d) completion of the new bus storage facility.

The second phase includes completion of the 1.3 mile extension of the Caltrain rail line from the existing Fourth and King Streets station underground into the new Transbay Transit Center, which is estimated to cost \$2.6 billion. The TJPA has secured \$642 million of funding for this second phase and the TJPA is currently actively seeking additional sources of funds to complete the project.

According to Mr. Kim, no further amendments to this agreement are anticipated in the short term. However, Mr. Kim advises that the provision of additional SFMTA staff support services to be provided to the TJPA may be necessary as the construction of the Transbay Transit Center is completed and/or to facilitate bus operations, vehicular traffic and pedestrian traffic in and around the new Transbay Transit Center. Any additional amendments to the subject agreement between the SFMTA and the TJPA would be subject to future approval by the TJPA Board of Directors, the SFMTA Board of Directors and the Board of Supervisors.

RECOMMENDATION

Approve the proposed resolution.

Item 6
File 13-0264

Department:
The Port

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would adopt “Guidelines for the Establishment and Use of an Infrastructure Financing District (IFD) with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission”. The Port IFD Guidelines establish the threshold criteria that must be met in order to establish a Port IFD and the strategic criteria that should be considered by the Board of Supervisors but are not required to establish the Port IFD.

Key Points

- State law authorizes the establishment of a Port IFD to finance public improvement projects along the San Francisco waterfront. The Port IFD may finance the same types of improvement projects that are financed by non-Port IFDs (open space, parks, and street improvements), as well as projects specific to the Port, including removal of bay fill, storm water management facilities, shoreline restoration, and maritime facility improvements. Increased property tax revenues resulting from certain Port development projects (tax increment) may be redirected from the General Fund to the Port IFD in order to finance public improvements, subject to Board of Supervisors approval.
- The Board of Supervisors previously approved a resolution of intention (1) to establish the Port IFD consisting of eight project areas; and (2) directing the Port Executive Director to prepare a financing plan, subject to Board of Supervisors’ approval. The Port intends to submit a Port IFD financing plan for proposed development on Piers 30-32 and Seawall Lot 330 to the Board of Supervisors in late 2014.
- The Budget and Legislative Analyst recommends amendments to the proposed Port IFD guidelines, including to Threshold Criteria 6, 7, and 8, to clarify the intent of the threshold criteria, as noted in the recommendations below.

Fiscal Impact

- Threshold Criteria 5 requires that financing plans for each of the Port IFD project areas demonstrate a net economic benefit, while the City’s IFD Guidelines. Previously approved by the Board of Supervisors require that the IFD demonstrate a net fiscal benefit to the General Fund. The City’s IFD Guidelines acknowledge that the Port’s use of IFD law differs from the City. However, in order to fully disclose the fiscal impact of the Port IFD on the City’s General Fund, the proposed Port IFD Guidelines should be amended to require that project area financing plans project the net fiscal impact to the City’s General Fund, as well as the net economic benefits.

Policy Considerations

- Property taxes are apportioned to the Educational Revenue Augmentation Fund (ERAF), the City’s General Fund, and other taxing entities. Under State law, in five of the Port IFD project areas, the ERAF portion of tax increment may be redirected to the Port IFD in an amount proportional to the General Fund portion of tax increment that is redirected to the Port IFD. Threshold Criteria 6 maximizes redirection of the ERAF portion of tax increment to the Port IFD in order to maximize the Port’s ability to finance public improvements. Redirecting the ERAF’s share of tax increment could potentially result in a State General Fund cost to backfill those monies intended for education.
- The proposed Port IFD Guidelines will guide future Board of Supervisors’ decisions on allocation of City and ERAF tax increment. Therefore, approval of the proposed resolution is a policy decision for the Board of Supervisors.

Recommendations

1. Amend the proposed resolution to request the Port to amend:
 - (a) The Port IFD Guidelines to specify that the threshold criteria must be met in order to establish a Port IFD or project area, and the strategic criteria should be considered by the Board of Supervisors but are not required to establish a Port IFD;
 - (b) Threshold Criteria 5 to require that the project area financing plan projects the net fiscal impact to the City's General Fund, as well as the net economic benefits, over the term of the Port IFD;
 - (c) Threshold Criteria 6 and 7 to specify that the share of tax increment allocated to the City and ERAF is the tax rate established annually by the State for the ERAF and by the Board of Supervisors for the City pursuant to the California Revenue and Taxation Code; and
 - (d) Threshold Criteria 8 to specify that ERAF's excess share of tax increment may not be re-allocated to the City's General Fund or to improvements in the City's seawall and other measures to protect against sea level rise.
2. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

California Government Code Section 53395 et seq., which became law in 1990, authorizes cities and counties to establish Infrastructure Financing Districts (IFD), subject to approval by the city council or county board of supervisors, to finance "public capital facilities of communitywide significance." The definition of such public facilities includes parks, other open space, and street improvements. In addition, Section 53395.8 authorizes the establishment of an IFD by the Port of San Francisco (Port IFD) to finance additional improvement projects along the San Francisco waterfront, such as structural repairs and improvements to piers, seawalls, and wharves as well as historic rehabilitation of and seismic and life-safety improvements to existing buildings. The establishment of a Port IFD is subject to approval by the Board of Supervisors.

Background

State Law Authorizes the Establishment of Infrastructure Financing Districts

In order to provide alternative financing mechanisms for local jurisdictions to fund public works and services, State law¹ authorizes cities and counties to establish IFDs within individual city or county boundaries to finance the:

- Purchase, construction, expansion, improvement, seismic retrofit or rehabilitation of any real or other tangible property with an estimated life of 15 years or longer, including parks, other open space, and street improvements;
- Planning and design work directly related to the purchase, construction, expansion, improvement, seismic retrofit or rehabilitation of that property;
- Reimbursement to a developer of a project located entirely within the boundaries of an IFD for any permit expenses incurred and to offset additional expenses incurred by the developer in constructing affordable housing units;

¹ California Government Code Section 53395 et seq.

- Costs incurred by a county in connection with the division of taxes collected.

An IFD, once established with specific boundaries, obtains revenue in the same manner as former redevelopment districts. Assessed values on properties located within the IFD, and the property taxes derived from those values, are fixed at a baseline value. Increases in assessed value above the baseline and the associated increase in property tax, known as tax increment, may then be used to pay for the new public facilities that the IFD was established to pay for.

The City's Guidelines for IFDs, "Guidelines for the "Establishment and Use of Infrastructure Financing Districts in the City and County of San Francisco" were adopted by the Board of Supervisors on February 8, 2011 (Resolution No. 66-11). The City's Guidelines do not apply to an IFD on land owned or managed by the Port. The City currently has one established IFD, located in Rincon Hill, which is subject to the adopted guidelines, and was approved by the Board of Supervisors on February 15, 2011 (Ordinance No. 19-11).

State Law Authorizes the Establishment of an Infrastructure Financing District on Port Property

State law² authorizes the establishment of a Port IFD to finance additional improvement projects along the San Francisco waterfront. The additional improvement projects include removal of bay fill, storm water management facilities, shoreline restoration, maritime facility improvements, historic rehabilitation, and other improvement projects not included in non-Port IFDs.

A Port IFD may be divided into individual project areas, subject to Board of Supervisors approval. The State laws described in this report would apply to each Port project area that the Board of Supervisors approves.³ On March 27, 2012, the Board of Supervisors approved a resolution of intention to establish a Port IFD (Resolution No. 110-12), with seven project areas. On June 12, 2012, the Board of Supervisors amended the resolution of intention to include Seawall Lot 351 as the eighth project area in the Port IFD (Resolution No. 227-12). The eight project areas for the Port IFD in the amended resolution of intention are:

1. Seawall Lot 330 (Project Area A)
2. Piers 30-32 (Project Area B)
3. Pier 28 (Project Area C)
4. Pier 26 (Project Area D)
5. Seawall Lot 351 (Project Area E)
6. Pier 48 (Project Area F)
7. Pier 70 (Project Area G)
8. Rincon Point-South Point (Project Area H)

The resolution of intention allows the Port to establish additional project areas in compliance with State law, as noted below.

The previously approved resolution of intention directs the Port Executive Director to prepare a financing plan, which is subject to approval of the Board of Supervisors. According to Mr. Brad

² California Government Code Section 53395.8

³ California Government Code Section 53395.8(g)

Benson, Port Special Projects Manager, the Port intends to submit a Port IFD financing plan associated with the proposed multi-purpose venue on Piers 30-32 and the companion mixed use development on Seawall Lot 330 to the Board of Supervisors in late 2014, after the City has completed environmental review of the proposed project.

According to State law⁴, the portion of the tax increment allocated to local educational agencies, San Francisco Unified School District, San Francisco Community College District, and the San Francisco County Office of Education, may not be allocated to the Port IFD. The tax increment from other recipients of City property taxes, including the Bay Area Air Quality Management District and Bay Area Rapid Transit District, may be allocated to the Port IFD if a resolution approving the financing plan is adopted by that recipient and sent to the Board of Supervisors.⁵

Except for specified circumstances, State law⁶ mandates that any tax increment allocated to the Port IFD must be used within the Port IFD's boundaries. In addition, a minimum of 20 percent of the tax increment allocated to the Port IFD must be set aside to be expended exclusively on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront.

Educational Revenue Augmentation Fund Tax Increment Allocated to Port IFD in Specific Project Areas

According to State law⁷, the Port may use tax increment generated by the five project areas noted below, which would otherwise be allocated to the Educational Revenue Augmentation Fund⁸'s (ERAF), subject to specific limitations. Two of the five project areas – Seawall Lot 330 and Pier 70 – were included in the resolution of intention, previously approved by the Board of Supervisors, while three of the five project areas – Piers 19, 23, and 29 – may be proposed by the Port for inclusion in the Port IFD at a future date. According to Ms. Joanne Sakai, Deputy City Attorney, the Board of Supervisors may opt to not allocate ERAF's share of tax increment generated by any of the five project areas to the Port IFD on a case-by-case basis when considering whether to approve the proposed Port IFD financing plan.

⁴ California Government Code Section 53395.8.g.3.c.i

⁵ California Government Code Section 53395.8.g.5.

⁶ California Government Code Section 53395.8.g.3.c.ii

⁷ On September 29, 2012, Assembly Bill (AB) 2259 was passed.

⁸ The Educational Revenue Augmentation Fund redirects one-fifth of total statewide property tax revenue from cities, counties and special districts to school and community college districts. The redirected property tax revenue is deposited into a countywide fund for schools and community colleges (ERAF). The property tax revenue is distributed to the county's non-basic aid schools and community colleges (i.e., school and community college districts that receive more than the minimum amount of state aid required by the State constitution). In 2004, the State approved a complex financing mechanism, known as the triple flip, in which one-quarter cent of the local sales tax is used to repay the Proposition 57 deficit financing bond; property taxes are redirected from ERAF to cities and counties to offset revenue losses from the one-quarter cent sales tax; and State aid offsets losses to school and community college districts from the redirected ERAF funds.

Pier 70 Project Area

A Pier 70 project area may not be formed prior to January 1, 2014. According to Mr. Benson, the Port intends to submit a financing plan for the Pier 70 project area for Board of Supervisors consideration after it completes environmental review of the proposed Pier 70 mixed use development, likely in 2015 or 2016. The Port may allocate ERAF's share of tax increment from the Pier 70 project area to the Port IFD to fund public improvements at Pier 70. Under State law, the amount of ERAF's share of tax increment allocated to the Port IFD is proportional to the City's share of tax increment allocated to the Port IFD.⁹

The Port may issue debt, secured by the ERAF share of tax increment from the Pier 70 project area for up to 20 fiscal years from the first Pier 70 debt issuance. Once any ERAF-secured debt issued within the Pier 70 project area has been paid, ERAF's share of tax increment will be paid into ERAF. Beginning in the 21st fiscal year, ERAF's share of tax increment may only be used to meet debt service obligations for previously issued debt secured by ERAF's allocation of tax increment. ERAF's share of tax increment exceeding debt service obligations must be paid into ERAF.

Seawall Lot 330 and Piers 19, 23, and 29 Project Areas

ERAF's share of tax increment from Seawall Lot 330 and Piers 19, 23, and 29 may only be allocated to fund (a) construction of the Port's Cruise Terminal at Pier 27, (b) planning and design work directly related to construction of the Port's Cruise Terminal at Pier 27, (c) future installations of shoreside power facilities on Port maritime facilities, and (d) planning, design, acquisition, and construction of improvements to publicly-owned waterfront lands held by trustee agencies, such as the National Park Service, California State Parks, and City and County of San Francisco Departments to be used as a public spectator viewing site for America's Cup related events.

ERAF's share of tax increment allocated to Seawall Lot 330 and Piers 19, 23, and 29 project areas must be equal to the percentage of the City's share of tax increment allocated to these project areas and cannot exceed \$1,000,000 annually. The Port must set aside a minimum of 20 percent of ERAF's share of tax increment allocated to these project areas to pay for planning, design, acquisition, and construction of improvements to waterfront lands owned by Federal, State, or local trustee agencies, such as the National Park Service or the California State Parks.¹⁰

Any improvements made with ERAF's share of tax increment for the above purposes are not required to be located within the individual project areas from which ERAF's share of tax increment is allocated. To enable allocation of ERAF's share of tax increment from all of the eligible project areas noted above, the Board of Supervisors would have to approve an amendment the previously approved resolution of intention to form the Port IFD to authorize Piers 19, 23 and 29 as Port IFD project areas.

⁹ For example, for every \$1.00 in Property Taxes (not including Property Taxes designated to pay General Obligation bonds), \$0.25 is allocated to ERAF, \$0.65 is allocated to the City's General Fund, and \$0.10 is allocated to the other taxing entities (SFUSD, Community College District, BART, and Bay Area Air Quality Management District). If the Board of Supervisors were to approve 50% of the City's General Fund share of tax increment (or \$0.325 of \$0.65), then the ERA share of tax increment is 50% (or \$0.125 of \$0.25).

¹⁰ State law sets aside 20 percent from ERAF's tax increment in lieu of the minimum of 20 percent of the tax increment allocated to the Port IFD required to be set aside to be expended exclusively on shoreline restoration, removal of bay fill, or waterfront public access to or environmental remediation of the San Francisco waterfront.

Maps of the Port IFD, with specific project area boundaries defined, are provided in the Attachment to this report.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would adopt “Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission” (Port IFD Guidelines). The City’s Capital Planning Committee recommended approval of the Port IFD Guidelines on January 2, 2013.

The Port IFD Guidelines identify 10 threshold criteria and four strategic criteria. According to Mr. Benson, the threshold criteria must be met in order to establish a Port IFD and the strategic criteria should be considered by the Board of Supervisors but are not required for the establishment of a Port IFD. Because neither the proposed Port IFD Guidelines nor the proposed resolution define the purpose of the threshold criteria and strategic criteria, the proposed Port IFD Guidelines should be amended to specify that (1) the threshold criteria must be met in order to establish a Port IFD, and (2) the strategic criteria should be considered by the Board of Supervisors but are not required for the establishment of a Port IFD, comparable to language in the City’s Guidelines.

The Port IFD Guidelines are summarized below.

Threshold Criteria of the Port IFD Guidelines

1. Any Port IFD initially established is subject to Board of Supervisors approval and must:
 - Consist exclusively of Port property;
 - Meet the threshold criteria proposed in the Port IFD Guidelines;
 - Be accompanied by a project area-specific financing plan that meets State law requirements.
2. Potential property annexations to the Port IFD of non-Port property adjacent to Port property are subject to Board of Supervisors approval and will be evaluated individually to determine whether to annex the non-Port property. If annexation is approved, the percentage of the tax increment generated by the non-Port property not used to finance Port public facilities should be subject to the City’s IFD Guidelines.
3. No tax increment will be allocated to the Port IFD without completion of environmental review and recommendation for approval by the City’s Capital Planning Committee.
4. Public facilities financed by tax increment in project areas and any adjacent property annexations approved by the Board of Supervisors must be consistent with:
 - State law regarding IFDs;
 - The Port’s Waterfront Land Use Plan;
 - Any restrictions on Port land use pursuant to the Burton Act;
 - The Port’s 10-Year Capital Plan.
5. The Port must demonstrate that the project area will result in a net economic benefit to the City in the project area-specific financing plan by including:

- Total revenue that the General Fund is projected to receive;
 - Total number of jobs and other economic development benefits the project is expected to produce.
6. When an allocation of ERAF's share of tax increment, identified in the Port IFD Guidelines as \$0.25 per \$1.00 in tax increment, is authorized under State law, the City, subject to Board of Supervisors approval, should maximize such contributions to those project areas by allocating the maximum amount of City tax increment to those areas, identified in the Guidelines as \$0.65 per \$1.00 in tax increment. As previously noted, ERAF's share of tax increment is authorized for allocation within the Seawall Lot 330, Pier 19, Pier 23, Pier 29, and Pier 70 project areas.
 7. Tax increment amounts based on project area-specific financing plans for project areas are subject to approval by the Board of Supervisors and should be sufficient to enable the Port to:
 - Obtain fair market rent for Port leases after build-out of the project area;
 - Enable proposed development projects to attract equity;
 - Fund debt service and debt service coverage for any bonds issued in public facilities financed by tax increment in Port IFD project areas;
 - Fund the Port's administrative costs and authorized public facilities with available revenue on a pay-as-you-go¹¹ basis.
 8. Excess tax increment not required to fund public facilities in project areas will be allocated to either (a) the City's General Fund, (b) funding improvements to the City's seawall, or (c) protecting the City against sea level rise, as allowed by State law, contingent upon Board of Supervisors approval.
 9. The Port will include pay-as-you-go tax increment revenue allocated to the project area in the Port's Capital Budget if the Port issues revenue bonds to be repaid by tax increment revenue generated in one or more Port project areas in order to provide debt service coverage for Port revenue bonds as a source of funding.
 10. The Port is required to identify sources of funding to construct, operate and maintain public facilities by project area tax increment in the project area-specific financing plan.

Strategic Criteria of the Port IFD Guidelines

The four strategic criteria for the Board of Supervisors to consider, when approving the Port IFD, provide guidance in the appropriate use of Port IFD financing and in the selection of projects within the Port IFD. These strategic criteria are:

- Port IFD financing should be used for public facilities serving Port land where other Port monies are insufficient;
- Port IFD financing should be used to leverage non-City resources, such as any additional regional, State, or Federal funds that may be available;
- The Port should continue utilizing the "'best-practices' citizen participation procedures"¹² to help establish priorities for public facilities serving Port land;

¹¹ Pay-as-you-go is a method of financing expenditures with funds that are currently available rather than borrowed.

- The Port, the Mayor's Budget Office and the Controller should collaborate to conduct periodic nexus studies every ten years, at minimum, to examine whether the cost of basic municipal services, such as services provided by the Fire and Police Departments, are covered by the sum of the portion of property taxes the City receives from Port land, hotel, sales, payroll or gross receipts taxes, and any other taxes the City receives from Port land, and any other revenues that the City receives from Port land.

FISCAL ANALYSIS

While there is no direct fiscal impact of the proposed resolution to adopt the Port's Guidelines for Establishment and Use of an Infrastructure Financial District with Project Areas on Land under the Jurisdiction of the Port Commission, there are criteria within the Port IFD Guidelines that may have fiscal impacts to the Port and the City.

Threshold Criteria 5 Requires Net Economic, Not Fiscal, Benefit to the City

Threshold Criteria 5 requires that the project area financing plan demonstrate a net economic benefit to the City that, over the term of the project area, includes the (a) total estimated amount of revenue to the City's General Fund; and (b) number of jobs and other economic development benefits. In contrast, the City's IFD Guidelines require that the IFD provide a net fiscal benefit over the 30-year term of the IFD, "guaranteeing that there is at least some gain to the General Fund in all circumstances". In addition, State law¹³ requires only an analysis of costs and revenues to the City.

Threshold Criteria 5 states that the project area financing plan should be similar to findings of fiscal responsibility and feasibility reports prepared in accordance with Administrative Code Chapter 29. Administrative Code Chapter 29 requires more detailed evaluation of fiscal benefits to the City than required by the proposed Port IFD Guidelines, including direct and indirect financial benefits to the City, project construction costs, available funding to pay project costs, ongoing maintenance and operating costs, and debt service costs.

The City's IFD Guidelines acknowledge that the Port's use of IFD law differs from the City in that the Port intends to build infrastructure to attract private investment to create jobs, small business, waterfront visitors and other growth, and therefore would not necessarily be "predicated on up-zonings"¹⁴ that result in net fiscal benefits to the General Fund". However, in order to fully disclose the fiscal impact of the Port IFD on the City's General Fund, the Budget and Legislative Analyst recommends that the proposed Port IFD Guidelines be amended to require that the project area financing plan project the net fiscal impact to the City's General Fund, as well as the net economic benefits, over the term of the Port IFD.

¹² Best practices citizen participation procedures include regular publicly-noticed meetings of waterfront advisory committees to support ongoing communication with neighborhood and waterfront stakeholders as well as community planning processes for major waterfront open space, maritime, and development project opportunities and needs.

¹³ California Government Code Section 53395.8.g.3.c.vii

¹⁴ "Up-zonings" are increases in height, bulk or density, allowing increased development.

Threshold Criteria 6 and 7 Refer to Specific Tax Increment Percentages Which are Subject to Change

Threshold Criteria 6 and 7 refer to specific property tax rate allocations, as they are currently allocated. The City's property tax allocation is referred to in specific numeric terms as \$0.65 per \$1.00 in tax increment and ERAF's Property Tax allocation is referred to as \$0.25 per \$1.00 in tax increment. However, future State law may change these property tax allocations. In addition, these property tax allocations are subject to approval by the State for ERAF and by Board of Supervisors for the City on an annual basis. Therefore, the Budget and Legislative Analyst recommends that Threshold Criteria 6 and 7 specify that the share of tax increment allocated to the City and ERAF is the tax rate established annually by the State for ERAF and by the Board of Supervisors for the City pursuant to the California Revenue and Taxation Code.

Threshold Criteria 8 Does Not Specify ERAF's Excess Share of Tax Increment May Not be Re-Allocated to the City's General Fund

Threshold Criteria 8 states that excess tax increment not required to fund project area-specific public facilities should be allocated to the General Fund or to improvements in the City's seawall and other measures to protect against sea level rise. However, Threshold Criteria 8 does not specify that ERAF's excess share of tax increment may not be diverted in the manner outlined by Threshold Criteria 8. State law contains specific restrictions for how ERAF's share of tax increment may be used, as described in the Background Section of this report. Therefore, the Budget and Legislative Analyst recommends that Threshold Criteria 8 should specify that ERAF tax increment may not be re-allocated to the City's General Fund or to improvements in the City's seawall and other measures to protect against sea level rise.

POLICY CONSIDERATIONS

State Law Allows ERAF Tax Increment Intended to Fund Local Education to be used to Fund Construction of the Pier 27 Cruise Terminal and Development at Pier 70

As previously noted, ERAF's share of tax increment may be allocated to five project areas within the Port IFD and used for limited purposes. Threshold Criteria 6 specifies that the City should maximize ERAF contributions in designated project areas by allocating the maximum City contribution to those same project areas.¹⁵ The rationale for maximizing ERAF contributions is to maximize the Port's ability to pay for development of public infrastructure along the Port, such as the Cruise Terminal at Pier 27. Such allocations are subject to Board of Supervisors approval for each individual project area.

According to the Senate Appropriation Committee's fiscal summary of the State law, diverting ERAF's share of tax increment could potentially result in a State General Fund cost to backfill those monies intended for education. However, the potential State General Fund cost is unknown because the economic activity that would be generated absent a Port IFD is unclear.

¹⁵ ERAF's share of tax increment is allocated in proportion to the percentage of City tax increment allocated to the designated project areas.

Approval of the Proposed Resolution is a Policy Decision for the Board of Supervisors

The proposed Port IFD Guidelines will guide future Board of Supervisors' decisions on allocation of City and ERAF tax increment. Therefore, approval of the proposed resolution is a policy decision for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed resolution to request the Port to amend:
 - (a) The Port IFD Guidelines to specify that the threshold criteria must be met in order to establish a Port IFD or project area, and the strategic criteria should be considered by the Board of Supervisors but are not required to establish a Port IFD;
 - (b) Threshold Criteria 5 to require that the project area financing plan projects the net fiscal impact to the City's General Fund, as well as the net economic benefits, over the term of the Port IFD;
 - (c) Threshold Criteria 6 and 7 to specify that the share of tax increment allocated to the City and ERAF is the tax rate established annually by the State for the ERAF and by the Board of Supervisors for the City pursuant to the California Revenue and Taxation Code; and
 - (d) Threshold Criteria 8 to specify that ERAF's excess share of tax increment may not be re-allocated to the City's General Fund or to improvements in the City's seawall and other measures to protect against sea level rise.
2. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.











