


**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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March 22, 2013

**TO:** Budget and Finance Sub-Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** March 27, 2013 Budget and Finance Sub-Committee Meeting

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**Items 1 and 2**  
**Files 13-0177 & 13-0234**

**Department:**  
 Mayor's Office of Housing (MOH)

## EXECUTIVE SUMMARY

### Legislative Objectives

File 13-0234: Resolution authorizing the Director of Property and the Mayor's Office of Housing (MOH) as Successor Housing Agency to the former San Francisco Redevelopment Agency (SFRA) to (1) amend an existing Ground Lease with Broadway Sansome Associates, L.P. for the development and operation of 75 units of affordable housing at 255 Broadway, and (2) make any future amendments to the Ground Lease that do not decrease the revenues to the City or otherwise materially increase the obligations or liabilities of the City.

File 13-0177: Resolution authorizing the issuance of tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed \$23,900,000 to provide financing for the construction of 75 units of affordable housing at 255 Broadway.

### Background

- On July 20, 2010, the former SFRA and Chinatown Community Development Center (CCDC) executed a Ground Lease for the subject property at 255 Broadway for CCDC to develop and operate 75 units of affordable housing. The SFRA was dissolved on February 1, 2012 and SFRA's affordable housing assets and functions were transferred to the City.

### Key Points

- File 13-0234: The proposed amendments to the Ground Lease are required by the Project's Equity Investor and Construction Lender to proceed with financing the Project. The proposed Amended Ground Lease includes two amendments to the existing Ground Lease that the Budget and Legislative Analyst deems substantive or as having the potential to decrease revenues to the City: (1) after 55 years, increasing the income requirement for households to be eligible to live in the planned affordable housing from 50% to 60% of area median income, and (2) amending the "Permitted Uses of Surplus Cash," such that the City would receive up to \$16,500 less per year in the first five years of the Project than it would otherwise receive under the existing Ground Lease.
- File 13-0177: The proposed multifamily housing revenue bond is necessary for financing the construction of the planned affordable housing because a large portion of the committed financing for the Project will not be paid until the construction is completed. Although the City would issue the proposed multifamily housing revenue bonds, the obligation to repay the bonds would rest entirely on revenue generated by the Project and is the obligation of the Project sponsors. As such, the City would incur no financial liability from the issuance of such bonds.

### Fiscal Impact

- The City would potentially receive an estimated \$78,506 from Surplus Cash under the proposed Amended Ground Lease, in addition to Base Rent, as compared to an estimated \$161,006 from Surplus Cash under the existing Ground Lease, or a reduction of \$82,500 over the 15-year period. However, the impact on the City's receipt of Surplus Cash is not a significant loss to the City given (1) the City's overarching goal of developing affordable housing for low-income households, and (2) the City's commitment of \$13,783,800 to the development of the Project and annual operating subsidies increasing from \$100,814 in Year 1 to \$174,636 in Year 15.

### Recommendation

- Approve the proposed resolutions.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statements

File 13-0234: In accordance with City Charter Section 9.118(c), the modification or amendment of any lease of City-owned property, which when entered into was for a period of ten or more years or had anticipated revenue to the City of \$1,000,000 or more, is subject to approval by resolution of the Board of Supervisors.

File 13-0177: In accordance with City Charter Section 9.107, the Board of Supervisors is authorized to issue revenue bonds, without voter approval, when such bonds are issued to establish a fund for the purpose of financing the construction of housing.

### Background

The subject property at 255 Broadway, which consists of vacant land and a surface parking lot comprising 17,846 square feet, was formerly owned by the State Department of Transportation (Caltrans). This property contained a portion of the Embarcadero Freeway off-ramp, which was damaged in the Loma Prieta earthquake and subsequently demolished. The Embarcadero Roadway project replaced the Embarcadero Freeway, eliminating the need to retain the subject property for transportation uses. After Caltrans transferred the subject property to the City on December 30, 1994 at no cost, the property was placed under the jurisdiction of the Department of Public Works (DPW).

On May 18, 2004, DPW declared the subject property surplus under the City's Surplus Property Ordinance<sup>1</sup> and transferred the property to the Mayor's Office of Housing (MOH). According to MOH, DPW had an outstanding obligation to repay the San Francisco Municipal Transportation Authority (SFMTA) for the maintenance of the Embarcadero Roadway. In 2006, the former San Francisco Redevelopment Agency (SFRA) purchased the subject property from MOH for \$1,500,000 with the requirement that the property be used to develop affordable housing. In approving the sale of the subject property from MOH to the former SFRA for the development of affordable housing, the Board of Supervisors appropriated the \$1,500,000 in sale proceeds to DPW to provide the needed funds for DPW's obligation to SFMTA for maintenance of the Embarcadero Roadway.

Through an agreement with the former SFRA, MOH agreed to fund and manage the development of the 255 Broadway site into 51 units of affordable family rental housing. In December 2006, MOH issued a Request for Proposals and in June 2007 selected Chinatown Community Development Center (CCDC) as the developer. In 2009, SFMTA and MOH entered into an agreement to add 18 additional units to the planned affordable housing Project at 255 Broadway as replacement housing for displaced residents of housing that would need to be demolished to construct a Chinatown Central Subway Station. The Project plan has since been

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<sup>1</sup>The Surplus Property Ordinance, approved by the Board of Supervisors on November 18, 2002 (File No. 01-1498), established (a) a procedure for identifying "surplus," "unused," or "underutilized" City-owned properties and (b) a policy that such property would be used to provide housing for the homeless or be sold, with the proceeds to be used to finance affordable housing.

expanded to include a total of 75 units of affordable housing (including one unit for a property manager).

As shown in Table 1 below, the City's commitment to date for the development of affordable housing at 255 Broadway (not including SFRA's original purchase of the property from MOH for \$1,500,000) is \$13,783,800 in loans to CCDC that are unlikely to be repaid, or \$183,784 per unit based on 75 units. In addition, MOH plans to provide an annual operating subsidy to the Project, which would start at \$100,814 in Year 1 and increase to \$174,636 by Year 15.

**Table 1: City Financing of Affordable Housing at 255 Broadway**

Sources		Uses	
MOH	\$5,783,800	Predevelopment	\$3,123,929
SFMTA	<u>8,000,000</u>	Gap Financing	<u>10,659,871</u>
Total	\$13,783,800	Total	\$13,783,800

Source: Mayor's Office of Housing

According to Ms. Joan McNamara, Senior Project Manager at MOH, CCDC has expended \$2,741,197 to date in City-provided predevelopment funds.

### **City Ownership of Former Redevelopment Agency Affordable Housing Assets**

On July 20, 2010, the former SFRA and CCDC executed a Ground Lease for the subject property at 255 Broadway, under which the former SFRA agreed to lease the subject property to CCDC for the development of 75 units of affordable housing, for an initial term of 70 years, with an option to extend for an additional 29 years to 99 years, and with annual rent payable by CCDC to SFRA equal to 10 percent of the appraised value of \$3,750,000, or \$375,000, of which \$15,000 would be required as "Base Rent," and the remaining \$360,000 of which would be required only in the event the Project generated "Surplus Cash," as discussed below.

Under California Assembly Bill 26 (AB 26), the former SFRA was dissolved on February 1, 2012 and the SFRA's affordable housing assets and functions were transferred to the City, under the jurisdiction of MOH, as approved by the Board of Supervisors on January 24, 2012 (File No. 12-0021). AB 26 was subsequently amended to disallow the City from being the successor agency to the former SFRA's non-affordable housing assets and functions; however, the City remains the successor agency to the former SFRA's affordable housing assets and functions, as approved by the Board of Supervisors on October 2, 2012 (File No. 12-0898). As Successor Housing Agency to the former SFRA, the City owns the subject property at 255 Broadway and is successor to the former SFRA's rights and obligations under the existing Ground Lease. Any modifications or amendments to the lease of the subject property are therefore subject to Board of Supervisors approval.

According to Ms. McNamara, while it was typically the practice of the former SFRA to own and lease the properties on which SFRA financed the development of affordable housing, the City traditionally has not owned the properties on which MOH financed the development of affordable housing. Ms. McNamara advises that by retaining ownership of the subject property, the City will be able to ensure that the planned affordable housing remains affordable beyond the 55-year period usually provided under affordable housing covenants entered into by the City and private developers when the City does not own the property.

## DETAILS OF PROPOSED LEGISLATION

File 13-0234: The proposed resolution would authorize the Director of Property and MOH as Successor Housing Agency to the former SFRA to (1) amend an existing Ground Lease with Broadway Sansome Associates, L.P.<sup>2</sup> for the development and operation of 75 units of affordable housing at 255 Broadway, and (2) make any future amendments to the Ground Lease with Broadway Sansome Associates, L.P. that do not decrease the revenues to the City or otherwise materially increase the obligations or liabilities of the City.

According to Ms. McNamara, CCDC recently secured the financing needed to complete the construction of the planned affordable housing. According to Ms. McNamara, the proposed amendments to the Ground Lease are required by the Project's Equity Investor, Raymond James California Housing Opportunities Fund II L.L.C. (Raymond James), and the Project's Construction Lender, Silicon Valley Bank, to proceed with financing the Project. Currently, the estimated total cost of the Project is \$37,881,665, including \$13,783,800 in financing from the City, as shown in Table 1 above.

The proposed Amended Ground Lease includes two amendments to the existing Ground Lease that the Budget and Legislative Analyst deems substantive or as having the potential to decrease revenues to the City.

### (1) Income requirements

Under the proposed Amended Ground Lease, the income requirement for households to be eligible to live in the planned affordable housing increases after 55 years from no more than 50 percent of area median income (AMI) to no more than 60 percent of AMI, as determined by the U.S. Department of Housing and Urban Development. In contrast, under Section 1.29 of the existing Ground Lease, the income requirement remains at no more than 50 percent of AMI for the duration of the initial 70-year lease term. As such, the proposed amendment would likely result in some of the planned housing units serving a higher income group after 55 years. According to Ms. McNamara, this amendment is being proposed so that the Project is able to demonstrate to the IRS that the Project financing as structured can repay its debts fully over the course of the 55-year compliance term according to financial projections. However, Ms. McNamara advises that the Project is unlikely to increase to 60 percent of AMI after 55 years because sometime after the initial 15-year Tax Credit Compliance Period and depending upon the capital needs of the building, MOH anticipates that the Project will be refinanced and the Project sponsors will request additional financial support from MOH, allowing MOH to require the continuation of the 50 percent AMI income requirements in exchange for additional financial support.

### (2) Permitted Uses of Surplus Cash

The proposed Amended Ground Lease amends the "Permitted Uses of Surplus Cash," also commonly referred to as the "Surplus Cash Waterfall." The "Surplus Cash Waterfall" sets forth a list of permitted uses of Surplus Cash, in order of highest priority to lowest priority, in the event the Project generates Surplus Cash from rent and operating subsidies in any given year.

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<sup>2</sup> Broadway Sansome Associates, L.P. is a Partnership between CCDC and the Project's Equity Investor, Raymond James California Housing Opportunities Fund II L.L.C.  
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Ms. McNamara advises that the Surplus Cash Waterfall in the existing Ground Lease was tentative, and that MOH anticipated having to amend the Surplus Cash Waterfall to the satisfaction of the Project’s Equity Investor, once outside financing was identified, in order to proceed with the Project. Table 2 below compares the Surplus Cash Waterfall, in order of priority, under the existing Ground Lease to the proposed Amended Ground Lease.

**Table 2: Surplus Cash Waterfall, in order of priority, under the Existing and Proposed Amended Ground Leases**

Existing Ground Lease	Proposed Amended Ground Lease
<p>Payments from any Surplus Cash generated by the Project from rent and operating subsidies would be applied toward:</p> <ol style="list-style-type: none"> <li>1) <b>Base Rent Accrual</b>, to be paid to the City in the event the Project fails to generate enough income to pay Base Rent in previous years (Base Rent is \$15,000 per year).</li> <li>2) A <b>Partnership Management Fee</b> of \$15,530 in Year 1 (and increasing each year thereafter), to be paid to CCDC.</li> <li>3) A <b>Limited Partner Asset Management Fee</b>, if any.</li> <li>4) One-third of the remaining Surplus Cash would be allocated to the CCDC as an <b>Incentive Management Fee</b> in an amount not to exceed \$37,500 per year, and two-thirds of the remaining Surplus Cash would be paid to the California Department of Housing and Community Development (HCD) and to MOH in proportion to each agency’s investment in the project (approximately one-third HCD and two-thirds MOH).</li> </ol>	<p>Payments from any Surplus Cash generated by the Project from rent and operating subsidies would be applied toward:</p> <ol style="list-style-type: none"> <li>1) <b>Base Rent Accrual</b>, to be paid to the City in the event the Project fails to generate enough income to pay Base Rent in previous years (Base Rent is \$15,000 per year).</li> <li>2) A <b>Limited Partner Asset Management Fee</b> of \$3,662 in Year 1 (and increasing each year thereafter), to be paid to Raymond James.</li> <li>3) If necessary, replenishment of the <b>Operating Reserve Account</b>, which is 25 percent of annual Operating costs.</li> <li>4) A <b>Deferred Developer Fee</b> of \$82,500, to be paid to CCDC in five installments of \$16,500 over the first five years of the Project.</li> <li>5) A <b>Partnership Management Fee</b> of \$17,820 in Year 1 (and increasing each year thereafter), to be paid to CCDC.</li> <li>6) The same as bullet point No. 4 under the Existing Ground Lease.</li> </ol>

The proposed amendments to the Surplus Cash Waterfall, as shown in Table 2 above, include (1) moving the Limited Asset Management Fee to be paid to Raymond James from third priority to second priority in the Waterfall, (2) adding the replenishment of the Operating Reserve Account, (3) increasing the Partnership Management Fee from \$15,530 to \$17,820 in accordance with MOH’s updated guidelines for Partnership Management Fees, and (4) adding a Deferred Developer Fee of \$82,500 to be paid to CCDC in five annual installments of \$16,500. According to Ms. McNamara, CCDC elected to defer \$82,500 of its Developer Fee to help finance construction.

As a result of the proposed addition of the Deferred Developer Fee to the Project’s Surplus Cash Waterfall, the City would receive up to \$16,500 less per year in the first five years of the Project than it would otherwise receive under the existing Ground Lease. As a result of the other proposed amendments to the Surplus Cash Waterfall, the City would be somewhat less likely to receive any Surplus Cash which the Project may generate each year.

However, Ms. McNamara advises that the impact on the City's receipt of Surplus Cash is not a significant loss to the City given (1) the City's overarching goal of developing affordable housing for low-income households, and (2) the City's significant financial commitment to the Project including the commitment of \$13,783,800 to the development of the Project and the provision of annual operating subsidies increasing from \$100,814 in Year 1 to \$174,636 in Year 15.

As discussed above, the proposed resolution would also authorize the Director of Property and MOH to make any future amendments to the Ground Lease that do not decrease the revenues to the City or otherwise materially increase the obligations or liabilities of the City. According to Ms. McNamara, amendments that would materially increase the obligations or liabilities to the City, and would therefore be subject Board of Supervisors approval, might include extending the term of the lease beyond the term provided in the proposed Amended Lease, or providing financing for future repairs to the building.

File 13-0177: The proposed resolution would authorize the issuance of tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed \$23,900,000 for the purpose of providing financing for the construction of 75 units of affordable housing at 255 Broadway.

According to Ms. McNamara, the proposed multifamily housing revenue bond is necessary for financing the construction of the planned affordable housing because a large portion of the committed financing for the Project will not be paid until the construction is completed. Once construction is completed, the full principal amount of the proposed multifamily housing revenue bonds would be paid down immediately by the Project's Permanent Funding Sources. According to the Project's projections, the interest payments for the proposed multifamily revenue bonds would total \$685,550.

Ms. McNamara advises that although the City would issue the proposed multifamily housing revenue bonds, the obligation to repay the bonds would rest entirely on revenue generated by the Project and is the obligation of the Project sponsors. As such, the City would incur no financial liability from the issuance of such bonds.

## **FISCAL IMPACT**

As a result of the proposed addition of the Deferred Developer Fee to the Project's Surplus Cash Waterfall, the City would receive up to \$16,500 less per year in the first five years of the Project than it would otherwise receive under the existing Ground Lease. As shown in Table 3 below, the City would potentially receive an estimated \$78,506 from Surplus Cash under the proposed Amended Ground Lease, in addition to Base Rent, as compared to an estimated \$161,006 from Surplus Cash under the existing Ground Lease, or a reduction of \$82,500 over the 15-year period. In addition, as a result of the other proposed amendments to the Surplus Cash Waterfall, the City would be somewhat less likely to receive any Surplus Cash which the Project may generate each year.

However, Ms. McNamara advises that the impact on the City's receipt of Surplus Cash is not a significant loss to the City given (1) the City's overarching goal of developing affordable housing for low-income households, and (2) the City's significant financial commitment to the Project including the commitment of \$13,783,800 to the development of the Project and the

provision of annual operating subsidies increasing from \$100,814 in Year 1 to \$174,636 in Year 15.

**Table 3: Projected Surplus Cash and Projected Payments to the City under the Existing and Proposed Ground Leases**

<b>Year</b>	<b>Projected Surplus Cash</b>	<b>Potential Surplus Cash Payments to the City under the Existing Lease</b>	<b>Projected Surplus Cash Payments to the City under the Proposed Amended Lease</b>
1	\$65,472	\$29,468	\$12,968
2	\$59,031	\$25,460	\$8,960
3	\$57,586	\$24,470	\$7,970
4	\$55,942	\$23,379	\$6,879
5	\$54,091	\$22,183	\$5,683
6	\$48,059	\$9,989	\$9,989
7	\$45,757	\$8,565	\$8,565
8	\$43,212	\$7,020	\$7,020
9	\$40,411	\$5,346	\$5,346
10	\$37,342	\$3,538	\$3,538
11	\$33,990	\$1,588	\$1,588
12	\$30,342	\$0	\$0
13	\$26,382	\$0	\$0
14	\$22,095	\$0	\$0
15	\$17,465	\$0	\$0
<b>15-year Total</b>	<b>\$637,177</b>	<b>\$161,006</b>	<b>\$78,506</b>

## RECOMMENDATION

Approve the proposed resolutions.



**Item 4**  
**File 13-0227**

**Department:**  
Real Estate Division, Department of Administrative Services

## EXECUTIVE SUMMARY

### Legislative Objectives

The proposed resolution would (1) approve the finding that no greater than 20,000 net rentable square feet is suitable and sufficient for the Law Library and (2) authorize the Director of Property to enter into a lease agreement that is currently being negotiated, with the Van Ness Post Center, LCC for up to 20,000 net square feet at 1200 Van Ness Avenue. The proposed resolution would also authorize the Director of Property to negotiate and finalize a lease for alternate comparable space if a lease with Van Ness Post Center, LLC is not executed.

### Key Points

- Pursuant to State Law, the 1870 Act, the City and County of San Francisco must provide a Law Library for public use. Charter Section 8.103 is consistent with the 1870 Act and states that the City must provide “suitable” and “sufficient” accommodations for the Law Library.
- The Law Library is currently located in the War Memorial Veterans Building and must vacate the building once it closes for seismic renovations this summer. The Real Estate Division has located a property at 1200 Van Ness Avenue for the Law Library’s relocation.
- Pursuant to the proposed resolution, the lease terms that are being negotiated between the City and Van Ness Post Center, LLC are as follows: (1) not-to-exceed 20,000 net square feet; (2) base rent of not-to-exceed \$720,000 or \$36.00 per square foot per year; (3) one five-year term with 4 five-year options to renew (for a total 25 year term); (4) 3% annual increase in base rent; (5) 30,000 for FY 2012-13 increasing by \$300 each year; (6) tenant improvement and relocation costs not-to-exceed \$1,000,000 paid for by the City; (7) and any other terms and conditions the Director finds necessary to execute the lease.
- Under the proposed resolution, Board of Supervisors approval would not be required for the finalized lease between Van Ness Post Center, LLC, and the City. The Budget and Legislative Analyst recommends amending the proposed resolution to require Board of Supervisors approval of the finalized lease.
- The proposed lease would initially include approximately 15,633 net square feet on the first floor of 1200 Van Ness Avenue. In addition, the Letter of Intent between the City and Van Ness Post Center, LLC provides for the City to have the right of first offer to other spaces in the building, if these spaces become available when the current tenants vacate, which would increase the leased space by approximately 4,367 net square feet for total leased space at 1200 Van Ness Avenue of 20,000 net square feet. The proposed resolution should be amended to require Board of Supervisors approval for any lease modification that exercises the right of first offer.
- The proposed resolution does not explicitly state that if an alternate lease is needed in the event that the lease for 1200 Van Ness Avenue is not executed, it would be brought before the Board of Supervisors for approval; therefore, the Budget and Legislative Analyst recommends amending the proposed resolution by replacing the word “consideration” with “approval” to ensure that whatever final leased space is provided for the Law Library is approved by the Board of Supervisors prior to its execution.
- After the proposed resolution was drafted, Mr. John Updike, Director of Real Estate, advised the Budget and Legislative Analyst that the proposed resolution should include one five-year option to renew the lease subject to Board of Supervisors approval, rather than 4 five-year options. Therefore, page 3, line 7 of the proposed resolution should be amended to delete “up to 4 five-year options” and add “one five-year option.”

### **Fiscal Impact**

- Under the proposed resolution, the City would pay not to exceed \$720,000 annually in rent based on \$36.00 per square foot per year, increased by 3% per year, for up to 20,000 square feet and \$30,300 annually for utilities for a total of up to \$750,300 in annual rent and utilities in FY 2013-14. The City would also pay a one-time cost of up to \$1,000,000 previously appropriated by the Board of Supervisors in tenant improvement and relocation costs, subject to the Budget and Finance Committee's release of the reserve, for a total of \$1,750,300 in FY 2013-14.
- The Law Library's rent and utility costs of up to \$750,300 in FY 2013-14 under the proposed resolution for the new lease are \$559,869, or 294% more, than the FY 2012-13 occupancy fee paid by the Law Library to the War Memorial of \$190,431. The Board of Supervisors will need to appropriate up to an additional \$559,569 in General Fund monies in the Law Library's FY 2013-14 budget to pay for the estimated additional rent costs if the proposed new lease is approved.

### **Policy Consideration**

- Under the proposed resolution, the Board of Supervisors finds that the proposed property at 1200 Van Ness Avenue for no greater than 20,000 net square feet is "suitable" and "sufficient" for the Law Library pursuant to Charter Section 8.103; however, because the terms are not defined in the City Charter, it is up to the discretion of the Board of Supervisors to make this finding.
- The Law Library filed a Writ of Mandate against the City alleging that "at least 30,000 gross square feet is required for any space to be at least minimally adequate" and requested that the City is ordered to provide space consisting of "between 30,000 and 35,000 gross square feet."
- According to Mr. Updike, the increase in space from 12,816 net square feet to no greater than 20,000 net square feet is necessary to accommodate the Law Library's collection and customer work space. A report prepared for the Director of Real Estate by a consultant, determined that the 20,000 net square feet at 1200 Van Ness Avenue is "suitable and sufficient" based on certain conditions, including (1) equipping customer workspace with internet access, and (2) installing compacting shelving.<sup>1</sup>
- Because the proposed resolution is a finding that no greater than 20,000 net square feet is sufficient and suitable for the Law Library in accordance with the City Charter, approval of the proposed resolution is a policy matter for the Board of Supervisors

### **Recommendations**

- Amend the proposed resolution to require Board of Supervisors approval of the finalized lease between the City and Van Ness Post Center, LLC.
- Amend the proposed resolution to require Board of Supervisors approval for any lease modification that exercises the right of first offer for additional space at 1200 Van Ness Avenue.
- Amend page 3, line 7 of the proposed resolution to delete "up to 4 five-year options" and add "one five-year option".
- Amend page 4, line 2 of the proposed resolution to delete "consideration" and add "approval", in order to ensure that any alternate lease to the proposed lease between the City and Van Ness Post Center LLC is subject to Board of Supervisors approval.
- Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

<sup>1</sup> Compacting shelving is shelving installed on tracks, so that the shelves can be installed without aisles between the shelves but can be moved on the tracks for access.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with Administrative Code Section 23.27, leases in which the City is the tenant are subject to Board of Supervisors approval under certain conditions.

Pursuant to Charter Section 9118(c), any lease of real property for a period of ten or more years, including options to renew, by the City and County of San Francisco is subject to approval by the Board of Supervisors.

Pursuant to Charter Section 8.103, the City is required to provide suitable and sufficient quarters for the Law Library that is accessible to judges and officers of the court. Section 8.103 also requires the City to fund the salaries for at least three positions in the Law Library budget.

### Background

Pursuant to California State Law, specifically the 1870 Act, the City and County of San Francisco must provide a Law Library for public use. The 1870 Act established the Law Library as a legal entity, separate from the City and County, and requires the Board of Supervisors to appropriate General Fund monies for the following provisions:

*“fuel, lights and stationary and all necessary conveniences and care, rooms convenient and accessible to the Courts, sufficient for the use and accommodation of said law library and those who have occasion for its use.”*

The City and County of San Francisco Charter Section 8.103 is consistent with the 1870 Act and states that the City must provide “suitable” and “sufficient” accommodations for the Law Library as well as free access to the legal community as well as the general public. The Charter also requires the City to pay for the salaries of three positions in the Law Library budget including: 1) the Librarian, 2) the Assistant Librarian, and 3) the Bookbinder.

In the FY 2012-13 budget, as previously approved by the Board of Supervisors, the Board of Supervisors appropriated \$738,179 of General Fund monies for the Law Library budget, of which \$486,840 was to pay for salaries and fringe benefits for the three positions noted above and the remaining balance of \$251,339 to pay for rent, insurance, telephone and information systems, and general supplies needed by the Law Library. The Law Library receives additional funding for their programming and operating expenses from Superior Court filing fees.

#### *The Law Library’s Occupancy at the War Memorial Veteran’s Building*

The Law Library was originally located in City Hall. When City Hall closed for seismic renovations in 1995, the Law Library, the Mayor’s office, the Board of Supervisors, and the Chief Administrative Officer were relocated to the War Memorial Veterans Building until the renovations were complete.

On September 27, 1994, the City's Director of Property executed a Memorandum of Understanding (MOU) between the City and the War Memorial Board of Trustees for the exclusive use of 59,961 square feet of space on the third and fourth floors of the War Memorial Veterans Building at 410 Van Ness Avenue, of which the Law Library was initially allocated 8,559 net square feet of space for the Law Library operations.<sup>2</sup> The initial term of the MOU was for three-years and three-months which commenced on October 1, 1994 and expired December 31, 1997 with the option to extend for two additional six-month terms.

According to Ms. Elizabeth Murray, Managing Director of the San Francisco War Memorial and Performing Arts Center, the use of space for City departments in the War Memorial Veterans Building, including the 8,559 net square feet of space for the Law Library, was intended to be temporary. Moreover, it was understood that the Law Library would move out once the War Memorial was closed for seismic renovations in future years.

Since the original MOU was executed in 1994, the City has exercised the two, six-month extensions for space at the War Memorial Veterans Building and also executed two additional extensions.<sup>3</sup> On September 15, 2011, the War Memorial provided the City with a notice of termination of the MOU effective February 28, 2013 in order to seismically retrofit and renovate the War Memorial Veterans Building. The renovations are scheduled to begin this summer. According to Ms. Murray, no move-out schedule has been confirmed by the Law Library at this time, but the War Memorial has advised the Law Library that their optimum move-out period would be between May 17 and May 31, 2013.

Under the MOU between the City and the War Memorial Board of Trustees, the City paid the War Memorial an occupancy fee, which was calculated by dividing the total estimated cost of personnel, utilities and services for the third and fourth floors by the total rentable square footage of the two floors. The occupancy rate increased each year based on increases in costs of utilities and services. Table 1 below shows the occupancy fee schedule for the Law Library from FY 2008-2009 to FY 2012-13. Such occupancy fees were paid from the General Fund which were appropriated to the Law Library by the Board of Supervisors during the annual budget.

As shown in Figure 1 below, in FY 2009-10, the Library was allocated an additional 4,257 square feet, increasing the net square feet from 8,559 to 12,816.

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<sup>2</sup> The MOU provided office space on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the War Memorial Veterans Building for City Hall tenants displaced by the reconstruction of City Hall after the Loma Prieta earthquake, including the Clerk of the Board, Board of Supervisors, and Mayor's Office. Subsequently, other City tenants, including the Municipal Railway (Muni), Treasurer/Tax Collector's Office, Mayor's Office of Disability and the Department of the Environment occupied space on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the War Memorial Veterans Building.

<sup>3</sup> The first extension was a three-year extension from January 1, 1999 through December 31, 2001. The second extension began January 1, 2002 and would continue until the War Memorial Veterans Building closes for seismic retrofitting or until the space is otherwise required by the Board of Trustees.

**Table 1**  
**Law Library Occupancy Fee Schedule from FY 2008-09 through FY 2012-13**

Fiscal Year	Rate Per Gross Square Foot	Net Square Feet	Gross Square Feet <sup>1</sup>	Occupancy Fee
FY 2008-09	\$12.19	8,559	10,208	\$124,436
FY 2009-10	\$12.19	12,816	14,310	\$174,439
FY 2010-11	\$12.92	12,816	14,310	\$184,885
FY 2011-12	\$13.31	12,816	14,310	\$190,431
FY 2012-13 (11 mos.) <sup>2</sup>	\$13.31	12,816	14,310	\$174,561

<sup>1</sup>According to Ms. Murray, the City pays rent based on the Library’s gross square feet which t includes the Law Library’s net square feet and their pro-rated share of the 4<sup>th</sup> floor common space.

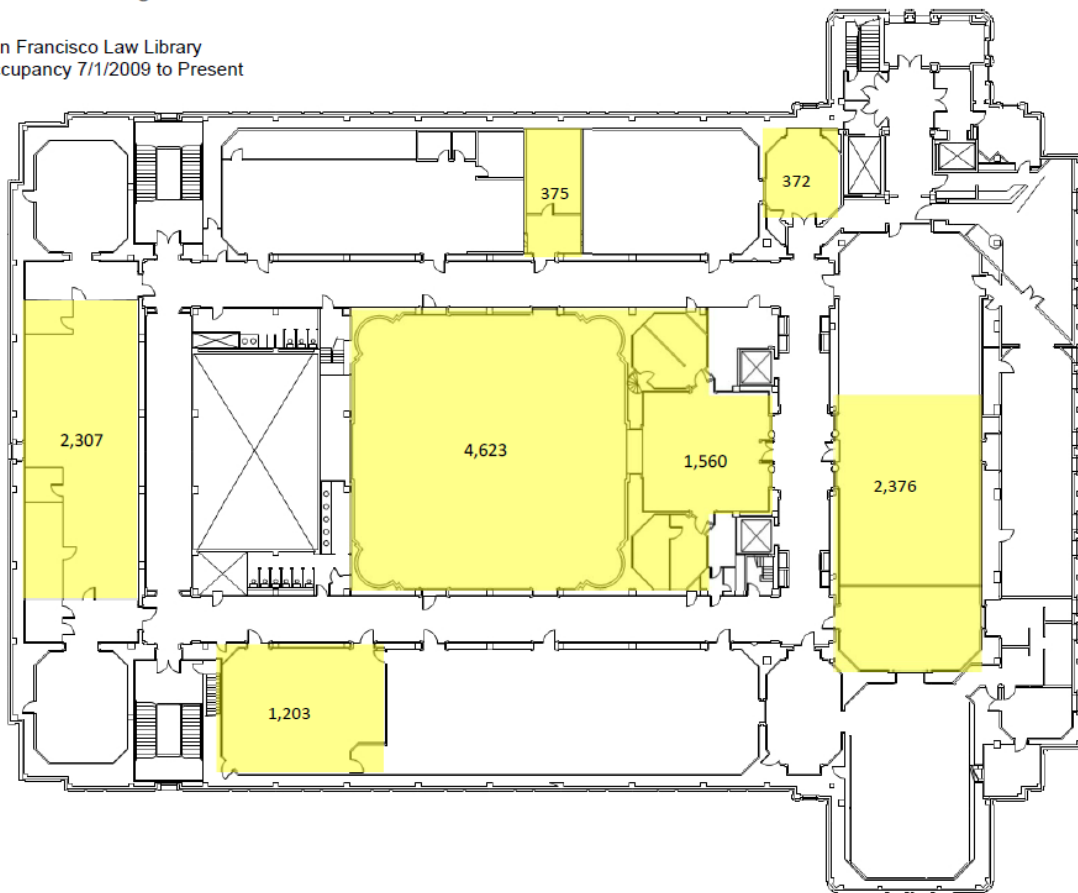
<sup>2</sup>This amount assumes that the Library completely vacates the War Memorial Veteran Building by June 1, 2013.

Figure 1 shows the Law Library’s use of space in the War Memorial Veterans Building.

**Figure 1**  
**Square Footage of the Law Library in the War Memorial Veterans Building**

Veterans Building - 4<sup>th</sup> Floor

San Francisco Law Library  
 Occupancy 7/1/2009 to Present



\*Total of 12,816 net square feet.

Because the Law Library must vacate the War Memorial Veterans Building before the War Memorial Veterans Building closes for seismic renovations this summer, the Real Estate Division must find alternative space for the Law Library that is “suitable” and “sufficient” for the Law Library.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would:

- (1) Find that no greater than 20,000 square feet of net rentable space is suitable and sufficient for the Law Library;
- (2) Authorize the Director of Property (also known as the Director of Real Estate) to enter into a lease agreement, which is currently being negotiated, between the City as the tenant and Van Ness Post Center, LLC, as the landlord, for no more than 20,000 net square feet on the ground floor and first floor at 1200 Van Ness Avenue for the Law Library based on the terms listed in Table 2 below and without further approval by the Board of Supervisors;
- (3) Authorize the Director of Property to take such actions necessary to implement the proposed lease between the City and Van Ness Post Center, LLC;
- (4) In the event that the lease agreement with the Van Ness Post Center, LLC is not executed, authorize the Director of Property to negotiate a lease for alternative space consisting of similar size, rent, and terms listed below; and
- (5) Authorize the Director of Property to enter into any needed additions or modifications to the proposed lease that would not increase the obligations or liabilities of the City.

As noted above, under the proposed resolution, Board of Supervisors approval would not be required for the finalized lease between Van Ness Post Center, LLC, and the City. The Budget and Legislative Analyst recommends amending the proposed resolution to require Board of Supervisors approval of the finalized lease.

Under the proposed resolution, if the lease agreement with Van Ness Post Center, LLC is not executed, the Director of Property is authorized to negotiate and finalize an alternate lease with comparable terms and subsequently bring the alternate lease to the Board of Supervisors for “review” and “consideration” but not for approval. Because the proposed resolution does not explicitly state that the alternate lease would be brought before the Board of Supervisors for approval, the Budget and Legislative Analyst recommends replacing the word “consideration” with “approval” to ensure that whatever alternate lease is provided for the Law Library, such lease must be subject to approval of the Board of Supervisors prior to its execution in accordance with Administrative Code Section 23.27.

### *Proposed Lease Terms Contained in the Resolution*

The lease terms in the proposed resolution and that Mr. Updike is proposing to negotiate at 1200 Van Ness Avenue for the Law Library are included in Table 2 below.

**Table 2**  
**Proposed Lease Terms for 1200 Van Ness Avenue**

<b>Terms</b>	<b>Description</b>
Square feet	Not-to-exceed 20,000 net square feet
Base Rent	Not-to exceed \$720,000 (\$3.00 per square foot per month or \$36.00 per square foot per year)
Term	Five-year term with up to 4 five-year options to renew (for a total term of 25 years)
Annual Base Rent Increase	3%
Utilities Payable by City	\$30,000 for FY 2012-13 increasing by \$300 each year
Tenant Improvements & Relocation	Not-to-exceed \$1,000,000 which was previously appropriated by Board of Supervisors in the FY 2013-2014 budget
Other Terms and Conditions	The Director of Property would be authorized to enter into other needed terms to execute the lease, following consultation with the City Attorney, that would not increase the obligation or liability of the City.

After the proposed resolution was drafted, Mr. John Updike, Director of Real Estate, provided a Letter of Intent providing for one five-year renewal option rather than 4 five-year renewal options as stated by the proposed resolution. Therefore, page 3, line 7 of the proposed resolution should be amended to delete “up to 4 five-year options” and add “one five-year option”.

According to Mr. Updike, the City considered a number of properties for the purposes of providing space for the Law Library. The properties that were seriously considered before entering into negotiations with Van Ness Post, LLC for 1200 Van Ness Avenue included 155 Hayes Street, 1275 Market Street, 1455 Market Street, and 11 Grove Street, according to Mr. Updike.

Based on comparable leases surveyed by the Real Estate Division, the average rent paid for space by current tenants in the Civic Center/Van Ness Corridor is \$38.25 per square foot per year. The average rent for comparable space that is currently on the market in the Civic Center/Van Ness Corridor is \$36.15 per square foot per year which is within range of what the City would pay for space at 1200 Van Ness Avenue, which is \$36.00 per square foot per year.

The proposed lease would initially include approximately 15,633 net square feet on the ground floor of 1200 Van Ness Avenue. In addition, the Letter of Intent provides for the City to have the right of first offer to other spaces in the building, if these spaces become available when the current tenants vacate, which would increase the leased space by approximately 4,367 net square feet for total leased space at 1200 Van Ness Avenue of 20,000 net square feet.<sup>4</sup> The proposed resolution should be amended to require Board of Supervisors approval for any lease modification that exercises the right of first offer.

Pursuant to the proposed resolution, if a lease agreement cannot be negotiated between the City and Van Ness Post Center, LLC, Mr. Updike, would be authorized to negotiate an alternative lease agreement with a different landlord for similar terms as those shown in Table 2 above. The proposed resolution states that the terms of an alternative lease would not exceed any of the

<sup>4</sup> According to Mr. Updike, the actual measurements will not be taken until later when the lease is finalized.

amounts in the terms set forth in Table 2 above, which would not increase the obligation or liabilities of the City.

The Budget and Legislative Analyst inquired about the “other terms and conditions” mentioned in the proposed resolution that the Director of Property would be authorized to enter into on behalf of the City upon approval of the proposed resolution, as long as such terms would not increase the obligations and liabilities of the City. Mr. Updike advised that a number of issues could potentially arise during lease negotiations such as matters related to commencement dates or insurance.

#### *Tenant Improvements and Relocation Cost*

The proposed tenant improvements and relocation costs, not to exceed \$1,000,000 that would be made at 1200 Van Ness Avenue to accommodate the Law Library include:

- 1) removing sheetrock from windows that were previously covered,
- 2) removing an interior office suite and installing offices and cubicles for the Library staff,
- 3) constructing walls for conference rooms, training rooms, and a server room,
- 4) installing a new entrance on Van Ness Avenue and closing the current entrance,
- 5) installing stacks for books, and
- 6) making lighting, electrical, and mechanical changes to support the improvements mentioned above.

Mr. Updike noted that the total cost for tenant improvements along with the cost to physically relocate the Library cannot exceed \$1,000,000 as shown in Table 3 below, which was previously appropriated by the Board of Supervisors in the Department of Public Works in the FY 2013-14 budget, and placed on Budget and Finance Committee reserve, in anticipation of the Law Library’s relocation.

**Table 3**  
**Tenant Improvement and Relocation Budget**

Tenant Improvement Allowance (\$40/sq.ft.)	\$800,000
Relocation	\$100,000
Furnishings (cubicles, desks, phones, etc.)	\$100,000
<b>Total</b>	<b>\$1,000,000</b>

At the time of writing this report, Mr. Updike, is in the process of negotiating a Letter Of Intent (LOI) with Van Ness Post Center, LLC for property at 1200 Van Ness Avenue which would finalize the terms of the lease that would be subsequently drafted. However, at this time the terms have not been finalized.

## **FISCAL IMPACT**

Under the proposed resolution, the City would pay not to exceed \$720,000 annually in rent based on \$36.00 per square foot per year for up to 20,000 square feet and \$30,300 annually for utilities for a total of up to \$750,300 in annual rent and utilities in FY 2013-14. The City would also pay a one-time cost of up to \$1,000,000 in tenant improvement and relocation costs, subject to the Budget and Finance Committee’s release of the reserve, for a total of \$1,750,300 in FY 2013-14



for the Law Library's leased space at 1200 Van Ness Avenue. As shown in Table 4 below, total estimated lease costs for the initial five-year term of the lease are \$5,039,577.

**Table 4**  
**Estimated Rent, Utilities, and Relocation and Tenant Improvement Costs**

	FY 2012-13 <sup>1</sup>	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2016-17	Total
Rent	\$60,000	\$720,000	\$741,600	\$763,848	\$786,763	\$810,366	\$3,882,577
Utilities	<u>2,500</u>	<u>30,300</u>	<u>30,600</u>	<u>30,900</u>	<u>31,200</u>	<u>31,500</u>	<u>157,000</u>
Subtotal	62,500	750,300	772,200	794,748	817,963	841,866	4,039,577
Relocation/ Tenant Improvements		1,000,000					1,000,000
<b>Total</b>	<b>\$62,500</b>	<b>\$1,750,300</b>	<b>\$772,200</b>	<b>\$794,748</b>	<b>\$817,963</b>	<b>\$841,866</b>	<b>\$5,039,577</b>

<sup>1</sup> One month costs. Mr. Updike does not anticipate an overlap in rent payments for the month of June, however, Ms. Murray, noted that if the Law Library is not completely moved out by May 31, 2013, the War Memorial would charge the Law Library for the month of June.

The Law Library's rent and utility costs of up to \$750,300 in FY 2013-14 under the proposed resolution for the new lease are \$559,869, or 294% more, than the FY 2011-12 occupancy fee paid by the Law Library to the War Memorial of \$190,431 (see Table 1 above). As noted above, the Board of Supervisors previously appropriated and reserved \$1,000,000 in General Fund monies in the Department of Public Works' FY 2013-14 budget to pay for the Law Library's relocation and tenant improvement costs. The Board of Supervisors will need to appropriate up to an additional \$559,569 in General Fund monies in the Law Library's FY 2013-14 budget to pay for the estimated additional rent costs if the proposed new lease is approved.

## POLICY CONSIDERATION

### The Finding That the Proposed Lease for Space at 1200 Van Ness is "Suitable" and "Sufficient" is Pending Litigation

Under the proposed resolution the Board of Supervisors finds that the proposed property at 1200 Van Ness Avenue for no greater than 20,000 net square feet is "suitable" and "sufficient" for the Law Library pursuant to Charter Section 8.103.

On February 5, 2013, the Law Library filed a Writ of Mandate against the City and the City Administrator alleging that "at least 30,000 gross square feet is required for any space to be at least minimally adequate" for the Law Library. Specifically, according to the Writ of Mandate, the Law Library requests that the City should be ordered to provide space that "consists of between 30,000 and 35,000 gross square feet and that are fully operational by May 2013."

According to Mr. Andrew Shen, Deputy City Attorney, the terms "suitable" and "sufficient" are not defined in the City Charter and therefore it is up to the discretion of the Board of Supervisors to make this finding.

The Law Library currently occupies 12,816 net square feet at the War Memorial Veterans Building. The proposed lease at 1200 Van Ness Avenue would provide no more than 20,000 net

square feet for the Law Library, including approximately 15,633 net square feet on the ground floor and approximately 4,367 net square feet of additional leased space if the City exercises the right of first offer as discussed above. The 20,000 net square feet is an increase of approximately 7,184 net square feet or 56%<sup>5</sup> from the Law Library's existing space of 12,816 net square feet.

According to Mr. Updike, the increase in space from 12,816 net square feet to no greater than 20,000 net square feet is necessary to accommodate the Law Library's collection and customer work space. According to a June 2012 draft report by the Controller's Office, the Law Library's existing space in the War Memorial Veterans Building does not meet six of ten American Association of Law Libraries standards, including (1) inadequate shelf space, resulting in the bulk of the Library's collection being stored on inaccessible offsite locations; and (2) inadequate work space for Law Library customers.

A report prepared for the Director of Real Estate by a consultant, Charles R. Dyer Consulting, determined that the 20,000 net square feet at 1200 Van Ness Avenue is "suitable and sufficient" based on certain conditions, including (1) equipping customer workspace with internet access, and (2) installing compacting shelving.<sup>6</sup>

Because the proposed resolution is a finding that no greater than 20,000 net square feet is sufficient and suitable for the Law Library in accordance with the City Charter, approval of the proposed resolution is a policy matter for the Board of Supervisors

## RECOMMENDATIONS

1. Amend the proposed resolution to require Board of Supervisors approval of the finalized lease between the City and Van Ness Post Center LLC.
2. Amend the proposed resolution to require Board of Supervisors approval for any lease modification that exercises the right of first offer for additional space at 1200 Van Ness Avenue.
3. Amend page 3, line 7 of the proposed resolution to delete "up to 4 five-year options" and add "one five-year option".
4. Amend page 4, line 2 of the proposed resolution to delete "consideration" and add "approval", in order to ensure that any alternate lease to the proposed lease between the City and Van Ness Post Center LLC is subject to Board of Supervisors approval.
5. Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

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<sup>5</sup> The City is currently negotiating with Van Ness Post Center, LLC for approximately 15,633 net square feet on the first floor of 1200 Van Ness, which is 2,817 square feet or 22% more than the 12,816 net square feet currently occupied by the Law Library at the War Memorial Veterans Building. According to Mr. Updike, the actual measurements for 1200 Van Ness will be finalized later when the lease is finalized.

<sup>6</sup> Compacting shelving is shelving installed on tracks, so that the shelves can be installed without aisles between the shelves but can be moved on the tracks for access.