

1 [Business & Tax Regulations Code - Improvement Districts: Longer Term When Assessments
2 Pledged to Bond, Lease, or Other Obligations; Alternative 2/3 Weighted Vote by Businesses]

3 **Ordinance amending San Francisco Business and Tax Regulations Code, Article 15:**
4 **Business Improvement Districts Procedure Code by amending Sections 1510 and 1511,**
5 **and by adding Section 1515, to provide for a district term of up to 40 years when**
6 **assessments are pledged or applied to pay any bond, financing lease (including any**
7 **certificates of participation therein), or other similar obligations of the City; authorize**
8 **the Board of Supervisors to require a weighted two-thirds (2/3) vote of business**
9 **owners to be assessed, based on ballots cast, as an alternative or additional procedure**
10 **for establishing a business improvement district and levying assessments; and clarify**
11 **existing provisions and update references to state law; and making a finding that**
12 **California Constitution, Article XIID does not apply to the levy of business**
13 **assessments authorized by Business and Tax Regulations Code, Article 15.**

14 NOTE: Additions are single-underline italics Times New Roman font;
15 deletions are ~~strike-through italics Times New Roman font~~.
16 Board amendment additions are double-underlined Arial font;
17 Board amendment deletions are ~~strikethrough Arial font~~.

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

19
20 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
21 by amending Section 1510, to read as follows:

22 SEC. 1510. PURPOSE.

23 (a) State law provides procedures to form property and business improvement
24 districts and levy assessments. This Article provides authority for the City to ~~invoke~~ augment and
25 modify those state law procedures ~~and in addition to apply those procedures to residential property~~

1 ~~that would not be covered were the City to follow the state law exclusively. This Article incorporates~~
2 ~~the state law and then specifies how~~ by authorizing the Board of Supervisors ~~may choose to augment~~
3 ~~the state law provisions by choosing to~~ do any of the following:

4 (1) ~~Reduce~~ the percentage of petitions required from owners in order to initiate
5 formation;

6 (2) ~~Have~~ the district encompass residential property, and to assess residential
7 property; ~~or~~

8 (3) ~~Extend~~ the term of the district to a maximum of 15 years, ~~unless a or such~~ longer
9 term as is authorized by state law; ~~or~~

10 (4) Extend the term of the district to a maximum of 40 years, if all or a portion of the
11 assessments will be pledged or applied to pay any bond, financing lease (including certificates of
12 participation therein), or other similar obligations of the City;

13 ~~(4.5) authorize the district to~~ Recover through assessments the costs incurred in ~~its~~
14 formation of the district;

15 (6) Disestablish a district upon a supermajority vote of the Board of Supervisors; or,

16 (7) Require a weighted two-thirds (2/3) vote of business owners to be assessed, based on
17 ballots cast, as an alternative or additional procedure for establishing a business improvement district
18 and levying assessments on business owners.

19 In addition, this Article augments and modifies state law by: ~~authorizing the Board of~~
20 ~~Supervisors to disestablish a district upon a supermajority vote of the Board,~~ requiring the Clerk of
21 the Board of Supervisors to notify business owners in English, Cantonese and Spanish when a
22 petition for district formation is received; ~~and~~ setting minimum levels of representation by
23 business owners on the governing body of the ~~proposed district~~ owners' association that
24 administers, implements or provides the activities and improvements specified in the management
25 district plan.

1 (b) ~~Through proceedings u~~Under this Article, the Board of Supervisors may establish
2 property and business improvement districts and may finance ~~enhancements~~ activities and
3 improvements through ~~annual~~ assessments apportioned among parcels of real property and/or
4 businesses within such districts. It is the intent of this Article to provide a vehicle for financing
5 ~~enhancements~~ activities and improvements ~~which that~~ supplement and complement existing
6 services and facilities. ~~District formation and assessment proceedings~~ The Board of Supervisors may
7 not ~~be initiated~~ establish any district or levy any assessment under this Article to ~~finance~~ replaeing
8 replace or ~~supplanting~~ existing City services. Nothing ~~herein in this Article~~ shall be construed
9 as prohibiting the establishment of districts or levying of assessments to finance local capital
10 improvements that are otherwise authorized under the City Charter, any other City ordinance, or
11 any other state law of the State of California.

12
13 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended
14 by amending Section 1511, to read as follows:

15 SEC. 1511. ~~SAN FRANCISCO PROCEDURAL AND SUBSTANTIVE~~ AUGMENTATION
16 AND MODIFICATION OF STATE LAW REQUIREMENTS GOVERNING PROPERTY AND
17 BUSINESS IMPROVEMENT DISTRICTS.

18 ~~In forming assessment districts that will fund improvements and services that confer special~~
19 ~~benefit on businesses, residential, commercial or residential and commercial property, t~~The Board of
20 Supervisors may elect to use the procedures set forth in California Streets & and Highways
21 Code Sections 36600 et seq. or may elect to use those procedures as modified herein by this
22 Article, for the formation of property and business improvement districts and the levy of assessments
23 that will fund activities and improvements that confer benefits on businesses, and/or on residential,
24 commercial, or residential and commercial properties. The Board of Supervisors shall be bound by,
25 and comply with, the applicable state law governing the formation of property and business

1 ~~improvement and maintenance districts in all other respects not inconsistent with this Article when~~
2 ~~forming an assessment district to fund improvements and services that provide special benefits to~~
3 ~~businesses, commercial and/or residential property.~~

4 (a) Notwithstanding Streets ~~&~~and Highways Code Section 36621(a) or any other
5 provision of state law to the contrary, the Board of Supervisors may initiate proceedings to
6 establish a property and business improvement district upon receipt of a petition signed by
7 property owners, business owners, or a combination of property owners and business owners
8 in the proposed district who will pay at least 30 percent of the assessments proposed to be
9 levied.

10 (1) The amount of assessments attributable to ~~property properties~~ and businesses
11 owned by the same owner that is in excess of ~~40~~ 25 percent of ~~the amount of~~ all assessments
12 proposed to be levied, shall not be included in determining whether the petition is signed by
13 the property owners, or business owners, ~~or combination of property owners and business owners,~~
14 ~~as the case may be,~~ who will pay the requisite 30 percentage or more of the total amount of
15 assessments proposed to be levied.

16 (2) Notwithstanding Streets and Highways Code Section 36623(b) or any other provision of
17 state law to the contrary, ~~Where~~ the Board of Supervisors initiates proceedings pursuant to this
18 subsection (a) to levy assessments on businesses, the Board shall conduct ~~a~~ the protest ballot
19 proceeding by ballot rather than by oral or written protests in accordance with Article XIII D of the
20 California Constitution notwithstanding any language to the contrary in Streets & Highways Code
21 Section 36623.

22 (b) Notwithstanding Streets ~~&~~and Highways Code Section 36622(h) or any other
23 provision of state law to the contrary, the Board of Supervisors may form a district ~~authorized to~~
24 and levy assessments.
25

1 (1) ~~f~~For a maximum term of up to 15 years, ~~except where a~~ or such longer term as is
2 authorized by state law; or,

3 (2) For a maximum term of up to 40 years, if all or a portion of the assessments will be
4 pledged or applied to pay any bond, financing lease (including any certificates of participation
5 therein), or other similar obligations of the City. Such assessments may be pledged or applied to pay
6 such obligations commencing when the assessments are levied, or such later date as the Board of
7 Supervisors shall determine.

8 (c) Notwithstanding Streets & and Highways Code Section 36632(~~b-c~~) or any other
9 provision of state law to the contrary, the Board of Supervisors may: (1) establish a~~n~~
10 assessment district pursuant to this Article that encompasses properties zoned for residential
11 use; and (2) levies levy assessments upon such properties; and (3) funds improvements and
12 services activities that benefit such properties ~~specialy benefit, properties zoned for residential use.~~

13 (d) Notwithstanding any provision of state law to the contrary, ~~T~~he Board of Supervisors
14 may authorize a~~n~~ assessment district formed pursuant to this Article to recover through
15 assessments the costs incurred in forming the district, including but not limited to:

16 (1) The costs of preparation of the management district plan and engineer's report
17 required by state law;

18 (2) The cost~~s~~ of circulating and submitting the petition to the Board of Supervisors
19 seeking establishment of the district;

20 (3) The costs of printing, advertising and the giving of published, posted or mailed
21 notices;

22 (4) ~~Compensation of any engineer or attorney employed to render~~ The costs of engineering,
23 consulting, legal or other professional services provided in proceedings under this Article or
24 Streets & and Highways Code Sections 36600 *et seq.*; and
25

1 (5) Costs ~~associated with~~ of any ballot proceedings required by this Article 15 or other
2 law for approval of a new or increased assessment.

3 ~~If the district will be authorized~~ In order to recover these costs, the management district
4 plan required pursuant to Streets ~~&~~ and Highways Code Section 36622 shall specify the
5 formation costs eligible for recovery through assessments, the schedule for recovery of those
6 costs, and the basis for determining the amount of the additional assessment for recovery of
7 such costs, including the maximum amount of the additional assessment, expressed either as
8 a dollar amount, or as a percentage of the underlying assessment.

9 (e) Notwithstanding Streets ~~&~~ and Highways Code Section 36670 or any other
10 provision of state law to the contrary, the Board of Supervisors may, by a supermajority vote of
11 eight or more members, notice a hearing and initiate proceedings to disestablish for any
12 reason a district formed after ~~the effective date of this section~~ April 4, 2004. Where the Board of
13 Supervisors seeks to disestablish a district in circumstances not authorized under Streets
14 ~~&~~ and Highways Code Section 36670, both the resolution of intention to disestablish the
15 district and any final resolution to disestablish the district shall ~~be subject to~~ require a
16 supermajority vote of no fewer than eight ~~or more~~ members.

17 (f) ~~This paragraph shall not be applicable~~ The Board of Supervisors, however, may not
18 disestablish a district under Section 1511(e) or Streets and Highways Code Section 36670 or any other
19 provision of law, where ~~the district has~~ there are any outstanding bonded ~~indebtedness~~, financing
20 lease (including any certificates of participation therein), or other similar obligations of the City,
21 payable from or secured by assessments levied within the district.

22 (g) Notwithstanding Streets and Highways Code Section 36640 or any other provision of
23 state law to the contrary:

24 (1) The Board of Supervisors may, in the resolution to establish the district, determine and
25 declare that any bond, financing lease (including any certificates of participation therein), or other

1 similar obligations of the City, shall be issued to finance the estimated costs of some or all of the
2 proposed improvements or activities described in such resolution, pursuant to the City Charter, City
3 ordinances or state law, as the Board may determine; and

4 (2) The amount (including interest) of any City bond, financing lease (including any
5 certificates of participation therein) or other similar obligations, may not exceed the estimated total of
6 (A) revenues to be raised from the assessments over the term of the district, plus (B) such other monies,
7 if any, to be available for such purpose, in each case determined as of the date such obligations are
8 issued or incurred.

9 (f-h) The management district plan submitted for each proposed district to be funded
10 ~~by assessments on property and subject to~~ under this Article shall ~~set forth minimum requirements to~~
11 ensure adequate representation on the governing body of the owners' association, of business
12 owners located within the district who do not own, or have an ownership interest in,
13 commercial property located within the district. Not less than 20 percent of voting members of
14 the ~~governing body of the district~~ owners' association shall be such business owners. Where
15 warranted by the circumstances in a proposed district, the Board of Supervisors may require
16 that the management district plan provide a greater level of business owner representation.
17 This subsection (h) shall not limit the authority of the Board of Supervisors to require ~~that the~~ the
18 incorporation of any other item or matter ~~be incorporated~~ into the management district plan
19 ~~pursuant to~~ under Streets & ~~and~~ Highways Code Section 36622(l) or other applicable law.

20 (g-i) ~~Not less~~ No fewer than 30 days after the Clerk of the Board receives a complete
21 petition seeking formation of a district pursuant to this Article, the Clerk shall mail notice to all
22 businesses located within the proposed district holding a current registration certificate issued
23 by the Tax Collector. The notice shall be in English, Spanish and Cantonese, and shall inform
24 the recipients ~~that:~~

1 (1) That a petition for formation of a property and business improvement district has
2 been received;

3 (2) That if the district is formed, ~~it would authorize~~ assessments will be levied against
4 property and/or businesses in the district; ~~and~~

5 (3) ~~That~~ formation of the district is subject to the approval of the Board of
6 Supervisors following public hearings and a ~~vote~~ ballot proceeding by owners of the property,
7 businesses, or both, subject to the assessment; and.

8 (4) ~~The notice shall also describe~~ How recipients may obtain further information about
9 the petition and proposed district.

10
11 Section 3. The San Francisco Business and Tax Regulations Code is hereby amended
12 by adding Section 1515, to read as follows:

13 SEC. 1515. ALTERNATIVE OR ADDITIONAL PROCEDURE FOR ESTABLISHING A
14 PROPERTY AND BUSINESS IMPROVEMENT DISTRICT -- REQUIRING WEIGHTED TWO-THIRDS
15 VOTE.

16 (a) If so provided in the Resolution of Intention and the Resolution to Establish, as an
17 alternative or additional procedure for establishing a business and property improvement district and
18 levying assessments on business owners, the Board of Supervisors may require a weighted two-thirds
19 (2/3) vote of the business owners proposed to be assessed, based on ballots cast. The votes shall be
20 weighted according to each business owner's estimated assessments in relation to the total estimated
21 assessments proposed to be levied on all business owners in the proposed district. The vote shall not be
22 effective unless business owners representing at least 50 percent of the total estimated assessments
23 proposed to be levied on all business owners in the district cast ballots.

24 (b) The Board of Supervisors hereby finds and determines that the business owners proposed
25 to be assessed, with votes allocated as provided in subsection (a), constitute the "electorate" for

1 purposes of Article XIIC §2(d) of the California Constitution as and to the extent that provision
2 applies to the levy of assessments on businesses pursuant to this Article.

3
4 Section 4. This section is uncodified.

5 Finding Regarding Business Owner Assessments, and California Constitution Article
6 XIID.

7 The Board of Supervisors hereby finds and determines that the levy of assessments on
8 business owners pursuant to this Article 15 is not subject to the provisions of Article XIID of
9 the California Constitution, because the assessments (1) are not on real property, (2) are not
10 on persons as an incident of property ownership, and (3) are not for special benefits conferred
11 on real property, all within the meaning of such Article XIID.

12
13 Section 5. This section is uncodified.

14 Application of Ordinance to Any Proposed Districts.

15 The amendments to Article 15 of the San Francisco Business and Tax Regulations
16 Code set forth above in Sections 1 – 3 shall apply to the formation of any district and levy of
17 assessments where the Board of Supervisors adopts the resolution of intention and/or the
18 resolution to establish after the introduction but prior to the effective date of this Ordinance;
19 and the adoption of any such resolution of intention and/or resolution to establish and all other
20 actions leading to the formation of any such district and the levy of assessments therein are
21 hereby ratified, approved and confirmed.

22
23 //

24 //
25

1 Section 6. This section is uncodified.

2 Scope of Amendment.

3 In enacting this Ordinance, the Board of Supervisors intends to amend only those
4 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, or
5 any other constituent parts of the Business and Tax Regulations Code that are explicitly
6 shown in this Ordinance as additions, deletions, Board amendment additions, and Board
7 amendment deletions, in accordance with the "Note" that appears under the official title of the
8 Ordinance.

9
10 Section 7. This section is uncodified.

11 Effective Date.

12 This Ordinance shall become effective 30 days after the date of enactment.

13
14
15
16 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

17
18 By:


19 Marie Corlett Blits
Deputy City Attorney



City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120963

Date Passed: December 04, 2012

Ordinance amending San Francisco Business and Tax Regulations Code, Article 15: Business Improvement Districts Procedure Code by amending Sections 1510 and 1511, and by adding Section 1515, to provide for a district term of up to 40 years when assessments are pledged or applied to pay any bond, financing lease (including any certificates of participation therein), or other similar obligations of the City; authorize the Board of Supervisors to require a weighted two-thirds (2/3) vote of business owners to be assessed, based on ballots cast, as an alternative or additional procedure for establishing a business improvement district and levying assessments; and clarify existing provisions and update references to state law; and making a finding that California Constitution, Article XIID does not apply to the levy of business assessments authorized by Business and Tax Regulations Code, Article 15.

November 14, 2012 Budget and Finance Committee - RECOMMENDED

November 20, 2012 Board of Supervisors - PASSED, ON FIRST READING

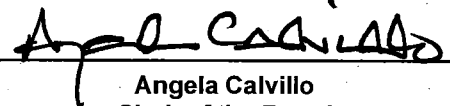
Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

December 04, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Mar, Olague and Wiener
Absent: 1 - Kim

File No. 120963

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
12/4/2012 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved