

File No. 241084

Committee Item No. 13

Board Item No. 1

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date December 4, 2024

Board of Supervisors Meeting Date December 17, 2024

#### Cmte Board

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Budget and Legislative Analyst Report
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<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
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**OTHER** (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date November 26, 2024

Completed by: Brent Jalipa Date December 5, 2024

[Business and Tax Regulations Code - Transfer Tax Exemption for Certain Port Leases]

**Ordinance amending the Business and Tax Regulations Code to exempt from real property transfer taxes certain leases with the Port Commission with effective dates on or after November 1, 2024, and on or before December 31, 2034.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in single-underline italics Times New Roman font.  
**Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Article 12-C of the Business and Tax Regulations Code is hereby amended by adding Section 1108.10, to read as follows:

**SEC. 1108.10. EXEMPTION FOR CERTAIN PORT LEASEHOLD INSTRUMENTS.**

**(a) Definitions.**

“Eligible Tenant” means a tenant to which the Port Commission conveys a leasehold interest in real property under the Port Commission’s jurisdiction, where such tenant was the tenant under a Prior Port Lease with respect to the same real property immediately preceding the effective date of the new leasehold interest, and the direct and indirect ownership interests in the tenant were identical under the Prior Port Lease at the time of termination and under the lease for which an exemption under this Section 1108.10 is being sought upon its effective date.

“Exempt Port Lease” means any deed, instrument, or writing pursuant to which the Port Commission conveys to an Eligible Tenant a leasehold interest in real property under the Port

1 Commission's jurisdiction, where such leasehold interest has an effective date that immediately follows  
2 the termination of a Prior Port Lease with respect to the same real property. For purposes of this  
3 Section 1108.10, real property is the "same real property" under a Prior Port Lease if the real  
4 property was subject to the Prior Port Lease immediately preceding the effective date of the deed,  
5 instrument, or writing for which an exemption under this Section is being sought.

6 "Prior Port Lease" means any deed, instrument, or writing pursuant to which the Port  
7 Commission granted a leasehold interest in real property under its jurisdiction with an effective date on  
8 or before December 31, 1979, without regard to subsequent amendments.

9 (b) **Exemption.** Any Exempt Port Lease with an effective date on or after November 1, 2024  
10 and on or before December 31, 2034, shall be exempt from the tax imposed under this Article 12-C if  
11 the requirements for exemption in subsection (c) are satisfied.

12 **(c) Requirements for Exemption.**

13 (1) Except as provided in subsection (c)(2), every person claiming the exemption under  
14 subsection (b) must:

15 (A) Obtain from the Port a certificate confirming that the deed, instrument, or  
16 writing for which the person is claiming the exemption is an Exempt Port Lease; and

17 (B) Submit the certificate described in subsection (c)(1)(A) to the County  
18 Recorder at the time such person submits the affidavit described in subsection (c) or (d) of  
19 Section 1111.

20 (2) Notwithstanding the requirements in subsection (c)(1), every person claiming the  
21 exemption under subsection (b) for an Exempt Port Lease with an effective date on or after  
22 November 1, 2024, but prior to July 1, 2025, may do the following in lieu of the procedures described  
23 in subsection (c)(1):

24 (A) Obtain from the Port a certificate confirming that the deed, instrument, or  
25 writing for which the person is claiming the exemption is an Exempt Port Lease.

1                                    (B) By December 31, 2025, submit the certificate described in  
2                                    subsection (c)(2)(A) to the County Recorder, along with a request for a refund of the tax paid on, or the  
3                                    cancellation or reduction of any deficiency assessed with respect to, the transfer subject to the  
4                                    certificate. The County Recorder may authorize the Controller to refund these amounts, without  
5                                    interest, without the need for a refund claim.

6                                    (3) Failure to timely satisfy the requirements in this subsection (c) will render the  
7                                    transfer ineligible for the exemption under subsection (b).

8                                    (d) **Sunset Date.** This Section 1108.10 shall expire by operation of law on December 31, 2034.

9  
10                                  Section 2. Effective Date. This ordinance shall become effective 30 days after  
11                                  enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
12                                  ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
13                                  of Supervisors overrides the Mayor's veto of the ordinance.

14  
15                                  APPROVED AS TO FORM:  
16                                  DAVID CHIU, City Attorney

17                                  By: /s/ Scott M. Reiber  
18    SCOTT M. REIBER  
19    Chief Tax Attorney

20                                  n:\legana\as2024\2500148\01797312.docx

## **LEGISLATIVE DIGEST**

[Business and Tax Regulations Code - Transfer Tax Exemption for Certain Port Leases]

**Ordinance amending the Business and Tax Regulations Code to exempt from real property transfer taxes certain leases with the Port Commission with an effective date on or after November 1, 2024, and on or before December 31, 2034.**

### **Existing Law**

Existing law imposes a real property transfer tax on the creation, termination, or transfer of a leasehold interest having a remaining term (including renewal options) of more than 35 years.

### **Amendments to Current Law**

This ordinance would exempt from real property transfer taxes leases with an effective date on or after November 1, 2024, but on or before December 31, 2034, where both:

- The Port Commission leases real property under its jurisdiction to a tenant who was also the tenant under a prior lease of that same property immediately preceding the new lease; and
- The prior lease had an effective date on or before December 31, 1979, without regard to subsequent amendments.

The ordinance would also establish the administrative requirements for obtaining the exemption, and would permit refunds for persons that paid taxes on exempt transactions.

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<b>Item 13</b> <b>File 24-1084</b>	<b>Department:</b> Port
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed ordinance would waive the transfer tax for Port leases that are effective between November 1, 2024 and December 31, 2034 under the following conditions: (1) The prior lease for the property had an effective date on or before December 31, 1979; (2) The replacement lease is with the same tenant; and (3) The replacement lease begins immediately after the prior lease is terminated.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>Article 12-C of the Business Tax and Regulations Code provides for a tax on any transfer of ownership of real property. Such transfers include leases longer than 35 years. In these cases, the transfer tax is calculated based on the present value of the rental payments over the lease term.</li> <li>The purpose of the proposed ordinance is to allow the Port to renegotiate leases for long-term tenants and make the transactions more financially feasible by reducing their tax liability.</li> <li>Based on the criteria in the proposed ordinance, 33 Port leases pre-date 1980 and would be eligible for the transfer tax waiver, if they were replaced with new long term lease with the same tenant. One tenant has negotiated a new long term lease, which is pending Board of Supervisors approval (JPPF Waterfront LP, File 24-1096). In addition, the Port plans to negotiate with one other tenant regarding a possible new long-term lease. No other eligible tenants have requested a new long-term lease, though the Port may seek lease extensions for six other tenants.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>If all eight Port tenants that are both eligible for the proposed property tax transfer exemption and that the Port believes could potentially pursue an extended lease term, the proposed ordinance would result in a one-time \$1,340,857 loss to the General Fund, which would occur over multiple years as new leases are signed. Actual values will be different as they will be based on the terms of the new leases.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>According to analysis provided by the Port for the lease that is pending Board approval and would benefit from the proposed ordinance, the transfer tax loss is offset by possessory interest taxes within two years.</li> <li>At the same time, given the City's overall financial condition, the Board of Supervisors should also consider amending the proposed ordinance to require the Port reimburse the General Fund for any loss in transfer taxes resulting from this ordinance.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Approval of the proposed ordinance is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

**BACKGROUND**

Article 12-C of the Business Tax and Regulations Code provides for a tax on any transfer of ownership of real property. Such transfers include leases longer than 35 years. In these cases, the transfer tax is calculated based on the present value of the rental payments over the lease term.

Like all commercial landlords in San Francisco, the Port is restructuring certain leases in light of a citywide decline in commercial rents and increase in commercial real estate vacancy. The Port is revising lease terms to avoid vacancy and foreclosures that jeopardize Port revenue.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would waive the transfer tax for Port leases that are effective between November 1, 2024 and December 31, 2034 under the following conditions:

1. The prior lease for the property had an effective date on or before December 31, 1979.
2. The replacement lease is with the same tenant.
3. The replacement lease begins immediately after the prior lease is terminated.

The purpose of the proposed ordinance is to allow the Port to renegotiate leases for long-term tenants and make the transactions more financially feasible by reducing their tax liability and removing an upfront cost that is currently due upon lease extension or execution of a replacement lease for the same operator.

Based on the criteria in the proposed ordinance, 33 Port leases pre-date 1980 and would be eligible for the transfer tax waiver, if they were replaced with new long term lease with the same tenant. One tenant has negotiated a new long term lease, which is pending Board of Supervisors approval (JPPF Waterfront LP, File 24-1096). In addition, the Port plans to negotiate with one other tenant regarding a possible new long-term lease. No other eligible tenants have requested a new long-term lease, though the Port may seek lease extensions for six other tenants.

The Port and OEWD maintain that the proposed one-time transfer tax waiver is appropriate for this subset of current long-time Port tenants that may seek to extend or replace their current leases because it will increase the capacity of such tenants to spend private capital on the refresh of these properties, facilitate re-financings, and generate more tax revenues to the City from possessory interest tax, gross receipts tax, and taxing on other commercial activity. In some cases it will prevent foreclosure or lease expiration, which would interrupt future tax payments to the City.

**FISCAL IMPACT**

Exhibit 1 below shows the eight Port tenants that are both eligible for the proposed property tax transfer exemption and that the Port believes could potentially pursue an extended lease term, with the economic terms of these potential extensions still unknown. To estimate the cost of the waiver, we reduced the new rents by 66 percent, extended the lease terms by 57 years, escalated rents each year by 3 percent, and applied a discount rate of 8 percent in order to calculate the net present value of the new lease payments.<sup>1</sup> We then applied those resulting values to the City's transfer tax rate. The result is a one-time \$1,340,857 loss to the General Fund, which would occur over multiple years as new leases are signed. Actual values will be different as they will be based on the terms of the new leases.

**Exhibit 1: Estimated One-Time General Fund Revenue Loss**

Company Name	Space Name	Start	End	Current Annual Rent	New Annual rent	Transfer Tax Loss
Blue & Gold Fleet, LP	Pier 41 1/2	4/1/1975	3/31/2015	\$391,751	\$133,195	\$19,200
Castagnola's Restaurant	Castagnola's Restaurant	5/1/1970	4/30/2036	\$308,894	\$105,024	\$15,138
G.B. Associates	SWL 322	12/1/1973	11/30/2039	\$1,411,502	\$479,911	\$207,528
JPPF Waterfront Plaza, L.P.	SWL 315	6/28/1974	6/27/2040	\$2,896,377	\$984,768	\$1,040,930
Pier 39 Limited Partnership	Pier 39	8/3/1977	12/31/2042	\$500,000	\$170,000	\$24,506
Portco, Inc	Cioppino's	4/1/1975	4/30/2036	\$75,833	\$25,783	\$3,372
Portco, Inc	Coast Marine & Industrial Supply	1/1/1976	4/30/2036	\$161,194	\$54,806	\$7,901
SFS39, Inc.	Franciscan Restaurant	5/1/1970	4/30/2036	\$454,611	\$154,568	\$22,282
				<b>\$6,200,162</b>	<b>\$2,108,055</b>	<b>\$1,340,857</b>

Source: BLA

Under City Charter Section 9.118(a), the Board of Supervisors will have the right to review and approve each of these lease transactions before the waiver would be conferred. Port staff caution that this estimate is not a likely outcome as not all of these tenants will seek extensions, nor would the Port seek the maximum term for all of these tenants. For example, retail leases are generally for shorter duration and rising sea levels may limit the useful life of some waterfront facilities.

<sup>1</sup> These assumptions are consistent with the business terms of a Port lease pending Board approval that would benefit from the proposed transfer tax waiver (File 24-1096, JPPF Waterfront Plaza LP). We also consulted the Assessor's Office to determine the appropriate tax calculation.



**POLICY CONSIDERATION**

The proposed transfer tax waiver would result in a one-time revenue loss to the General Fund. The Port and OEWD maintain that this one-time impact would be in exchange for an increased ability for the Port and the proposed sub-set of long-term tenants to enter into new or extended leases that will ultimately improve Port property and maintain ongoing revenues both to the Port and the City's General Fund. According to analysis provided by Century Urban for the one lease replacement currently before the Board that would benefit from the proposed transfer tax waiver (File 24-1096, JPPF Waterfront Plaza LP), the possessory interest tax paid by the existing tenant would offset the one-time loss in transfer taxes within two years. If the tenant defaulted and vacated the property, the City would likely not receive possessory interest taxes for two years while the Port found a new tenant for the property, resulting in a General Fund revenue loss of approximately \$1 million, a similar magnitude to the proposed transfer tax loss.

At the same time, given the City's overall financial condition, the Board of Supervisors should also consider amending the proposed ordinance to require the Port reimburse the General Fund for any loss in transfer taxes resulting from this ordinance. According to the Port's 2024 audited financial statement, the Port had \$276.1 million in unrestricted net assets as of June 30, 2024, all held in cash, which was an increase from the prior year unrestricted net assets of \$204.8 million. As we note in our report on the JPPF Waterfront Plaza lease, the Port did not budget the annual \$1.9 million in revenue loss from the Waterfront Plaza lease modifications but is able to absorb the revenue loss without reducing services. Port staff note that the Port's capital plan is underfunded and any transfer to the General Fund could require approval from the Port Commission.

**RECOMMENDATION**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

**From:** [Trejo, Sara \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Bintliff, Jacob \(ECN\)](#); [Taupier, Anne \(ECN\)](#); [REIBER, SCOTT \(CAT\)](#)  
**Subject:** Mayor -- Ordinance -- Transfer Tax Exemption for Certain Port Leases  
**Date:** Tuesday, November 5, 2024 2:33:30 PM  
**Attachments:** [LEG DIGEST Port Transfer Tax Exemption.DOCX](#)  
[ORD Port Transfer Tax Exemption FINAL.docx](#)

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Hello Clerks,

Attached is an Ordinance amending the Business and Tax Regulations Code to exempt from real property transfer taxes certain leases with the Port Commission with effective dates on or after November 1, 2024, and on or before December 31, 2034.

We respectfully request a waiver of the 30-day hold in order to track with the approval timeline for a pending Port lease extension for Waterfront Plaza that has been recommended by the Port Commission and for which a resolution to approve was also submitted on Nov. 5 for consideration by the Board.

Best regards,

**Sara Trejo**

Legislative Aide

Office of the Mayor

City and County of San Francisco