

File No. 091448

Committee Item No. \_\_\_\_\_

Board Item No. 19

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date January 12, 2010

#### Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
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#### OTHER


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Completed by: Annette Lonich Date January 5, 2010

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.

RECEIVED  
BOARD OF SUPERVISORS  
2009 DEC 15 AM 2:44  
BY \_\_\_\_\_  
Time Stamp or Meeting Date 

**INTRODUCTION FORM**

By a member of the Board of Supervisors or the Mayor

I hereby submit the following item for introduction:

- 1. For reference to Committee:  
    An ordinance, resolution, motion, or charter amendment
- 2. Request for next printed agenda without reference to Committee
- 3. Request for Committee hearing on a subject matter
- 4. Request for letter beginning "Supervisor \_\_\_\_\_ inquires..."
- 5. City Attorney request
- 6. Call file from Committee
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File Nos.
- 9. Request for Closed Session
- 10. Board to Sit as A Committee of the Whole

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

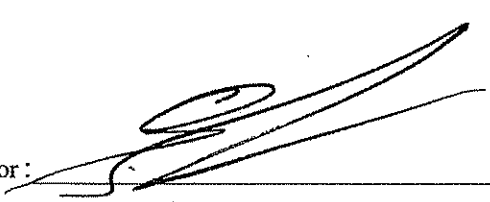
- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]

**Sponsor(s): Mayor Newsom, Eric Mar, Bevan Duffy**

**SUBJECT:** Resolution Determining Necessity to Incur Bonded Indebtedness  
The text is listed below or attached:

Resolution Determining Necessity to Incur Bonded Indebtedness in a maximum principal amount of \$150,000,000 within the boundaries of Special Tax District No. 2009-1 (San Francisco Sustainable Financing) and determining other matters in connection therewith.

Signature of Sponsoring Supervisor: 

**For Clerk's Use Only:**

091448

1 [Resolution Determining Necessity to Incur Bonded Indebtedness]

2

3 **Resolution Determining Necessity to Incur Bonded Indebtedness in a maximum**  
4 **principal amount of \$150,000,000 within the boundaries of Special Tax District No.**  
5 **2009-1 (San Francisco Sustainable Financing) and determining other matters in**  
6 **connection therewith.**

7

8 WHEREAS, On November 24, 2009, this Board of Supervisors (the "Board of  
9 Supervisors") of the City and County of San Francisco (the "City") adopted Resolution No.  
10 464-09, entitled "Resolution of Intention to Establish Special Tax District" (the "Resolution of  
11 Intention"), stating its intention to form "City and County of San Francisco Special Tax District  
12 No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District"), pursuant to  
13 Chapter 43, Article X of the San Francisco Administrative Code (the "Code"), which Code  
14 incorporates the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of  
15 Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the  
16 "Act"), for the purpose of financing and refinancing the acquisition, installation and  
17 improvement of energy efficiency, water conservation and renewable energy improvements to  
18 or on real property and in buildings, whether such real property or buildings are privately or  
19 publicly owned (the Facilities"); and

20 WHEREAS, In the Resolution of Intention, for the public purposes specified therein,  
21 which findings, declarations and determinations are incorporated herein by this reference, this  
22 Board of Supervisors stated its intention to undertake the proceedings to form the Special Tax  
23 District under the alternate procedures established by Section 43.10.17 of the Code, pursuant  
24 to which a special tax district may initially consist solely of territory proposed for annexation to  
25 the special tax district in the future, with the condition that a parcel or parcels within that

1 territory may be annexed to the special tax district and subjected to the special tax only with  
2 the unanimous approval of the owner or owners of such parcel or parcels at the time that such  
3 parcel or those parcels are annexed or in compliance with other procedures established by  
4 the Code; and

5 WHEREAS, On November 24, 2009, this Board of Supervisors also adopted  
6 Resolution No. 465-09, entitled "Resolution of Intention to Incur Bonded Indebtedness" (the  
7 "Resolution of Intention to Incur Indebtedness"), stating its intention, for the public purposes  
8 specified therein, to incur bonded indebtedness within the boundaries of the Special Tax  
9 District for the purpose of financing the Facilities; and

10 WHEREAS, In the Resolution of Intention to Incur Indebtedness, this Board of  
11 Supervisors stated its intention to undertake the proceedings to authorize the issuance of  
12 bonded indebtedness for the Special Tax District under the alternate procedure established by  
13 Section 43.10.18 of the Code, pursuant to which the proposition to authorize bonded  
14 indebtedness may be approved by the owner or owners of a parcel or parcels of property at  
15 the time that the parcel or parcels are annexed to the Special Tax District pursuant to the  
16 unanimous approval described in 43.10.17 of the Code or in compliance with other  
17 procedures established by the Code; and

18 WHEREAS, This Board of Supervisors held a noticed public hearing as required by the  
19 Code about the determination to proceed with the formation of the Special Tax District, the  
20 provision of the Facilities by the Special Tax District and the method of apportionment of the  
21 special tax to be levied within the Special Tax District; and

22 WHEREAS, Subsequent to the public hearing, this Board of Supervisors adopted a  
23 resolution entitled "Resolution of Formation to Establish Special Tax District No. 2009-1 (San  
24 Francisco Sustainable Financing), establish boundaries of said special tax district, to describe  
25

1 the facilities to be financed, to establish an appropriations limit and to provide for other  
2 matters related thereto" (the "Resolution of Formation"); and

3 WHEREAS, This Board of Supervisors also held a noticed public hearing as required  
4 by the Code related to the questions set forth in the Resolution of Intention to Incur  
5 Indebtedness; and

6 WHEREAS, No written protests related to the questions set forth in the Resolution of  
7 Intention to Incur Indebtedness have been filed with the Clerk of the Board of Supervisors;  
8 now, therefore, be it

9 RESOLVED, That the foregoing recitals are true and correct; and, be it

10 FURTHER RESOLVED, That this Board of Supervisors deems it necessary to incur  
11 bonded indebtedness in the maximum aggregate principal amount of \$150,000,000 within the  
12 boundaries of the Special Tax District for the purpose of financing the costs of the Facilities,  
13 including, but not limited to, the costs of issuing and selling bonds to finance all or a portion of  
14 the Facilities and the costs of the City in establishing and administering the Special Tax  
15 District; and, be it

16 FURTHER RESOLVED, That except as set forth in the immediately succeeding  
17 paragraph, the whole of the Special Tax District shall pay for the bonded indebtedness  
18 through the levy of the special tax, and that the Special Tax District shall initially consist solely  
19 of territory proposed for annexation to the Special Tax District in the future, with the condition  
20 that a parcel or parcels within that territory may be annexed to the Special Tax District and  
21 subjected to a special tax only with the unanimous approval (each, a "Unanimous Approval")  
22 of the owner or owners of such parcel or parcels at the time that such parcel or those parcels  
23 are annexed or in compliance with other procedures established by the Code, and that the tax  
24 is to be apportioned in accordance with the Method of Apportionment of Special Tax set forth  
25 in Exhibit "B" to the Resolution of Formation. Pursuant to Section 7.98.160(a)(i), the rate or

1 rates of the Special Tax applicable to a parcel or parcels in the Special Tax District shall be  
2 specified in the Unanimous Approval or such other procedures established by the Code  
3 relating to such parcel or parcels; and, be it

4 FURTHER RESOLVED, That Bonds in the maximum amount of \$150,000,000 are  
5 hereby authorized, subject to approval as described in the immediately succeeding paragraph  
6 below, and that the bonds may be issued in one or more series and mature and bear interest  
7 at such rate or rates, payable semiannually or in such other manner, all as this Board of  
8 Supervisors or its designee shall determine, at the time or times of sale of such bonds;  
9 provided, however, that the interest rate or rates shall not to exceed the maximum interest  
10 rate permitted by applicable law at the time of sale of the bonds and the bonds or any series  
11 thereof shall have a maximum term of not to exceed 40 years; and, be it

12 FURTHER RESOLVED, That pursuant to Section 43.10.17 of the Code, in lieu of the  
13 procedure set forth elsewhere in the Code and in Sections 53353.5, 53354 and 53355 of the  
14 Act, the proposition to authorize issuance of the Bonds for the Special Tax District shall be  
15 approved by the owner or owners of a parcel or parcels of property at the time that the parcel  
16 or parcels are annexed to the Special Tax District pursuant to the unanimous approval  
17 described in 43.10.17 or in compliance with other procedures established by the Code. No  
18 additional hearings or procedures are required, and such unanimous approval shall be  
19 deemed to constitute a unanimous vote in favor of such proposition; and, be it

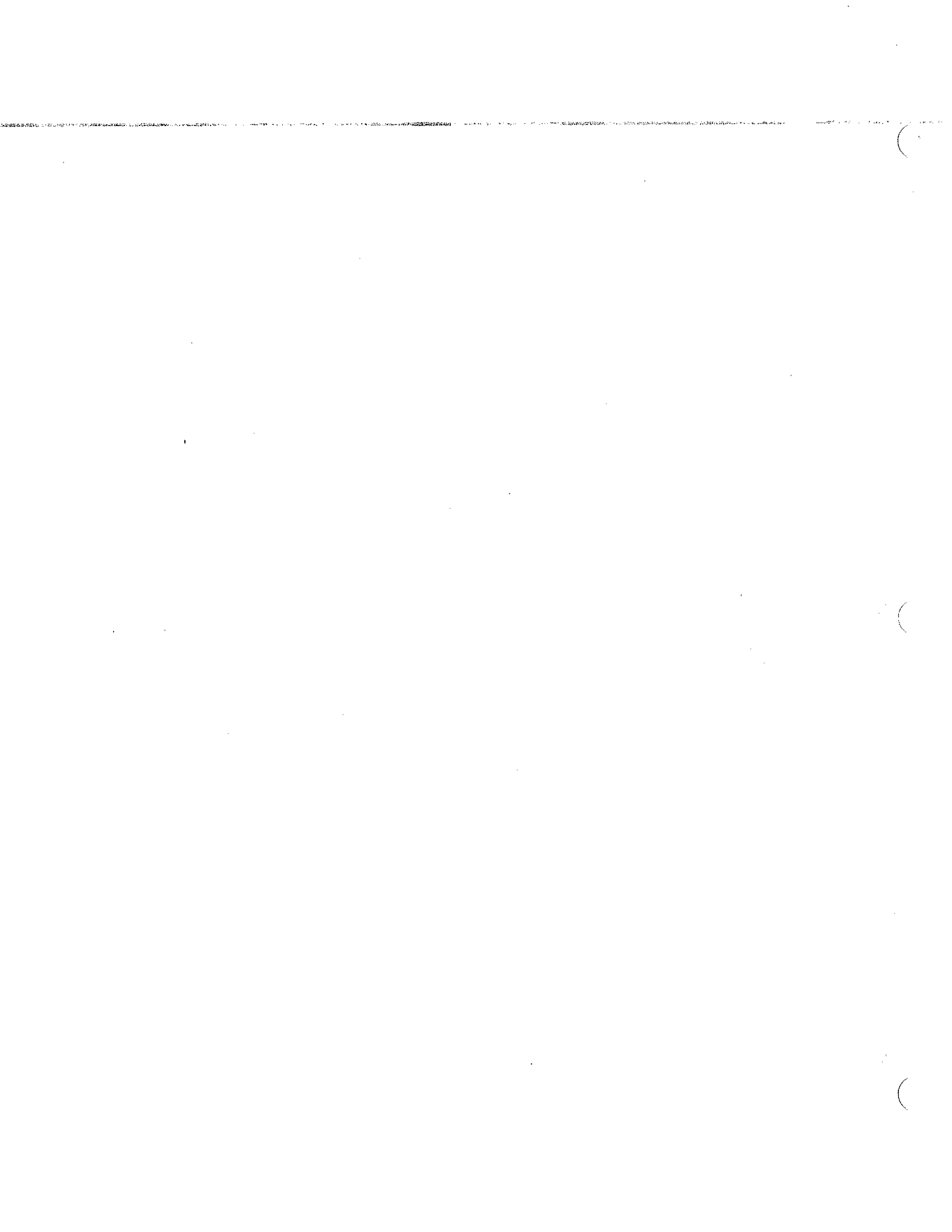
20 FURTHER RESOLVED, That consistent with the Resolution of Intention to Incur  
21 Indebtedness, and pursuant to Section 43.10.19 of the Code, in connection with the  
22 annexation of a parcel or parcels to the Special Tax District pursuant to the alternate and  
23 independent procedure set forth in Section 43.10.17 of the Code and the conduct of an  
24 election on the proposition to authorize bonded indebtedness pursuant to the alternate and  
25 independent procedure set forth in Section 43.10.18 of the Code, the City may, without

1 additional hearings or procedures, designate a parcel or parcels as an improvement area  
2 within the Special Tax District. Each improvement area will be known as "Improvement Area  
3 No. \_\_\_\_ of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco  
4 Sustainable Financing)," and after the designation of a parcel or parcels as an improvement  
5 area, all proceedings for approval of the appropriations limit, the rate, method of  
6 apportionment and manner of collection of special tax and the authorization to incur bonded  
7 indebtedness for such parcel or parcels shall apply only to the improvement area, and the City  
8 may incur indebtedness payable solely from special taxes levied on property in the  
9 improvement area; and, be it

10 FURTHER RESOLVED, That this Resolution shall take effect upon its adoption.

11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13  
14 By: (See File for Signature)  
15 MARK D. BLAKE  
16 Deputy City Attorney  
17  
18  
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24  
25







**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**

**Ben Rosenfield**  
Controller

**Monique Zmuda**  
Deputy Controller

**Nadia Sesay**  
Director  
Office of Public Finance

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors  
**FROM:** Nadia Sesay, Director of Public Finance *NS*  
**SUBJECT:** San Francisco Sustainable Financing Program – District Formation & Program Legislation  
**DATE:** December 15, 2009

The Resolutions and Ordinance summarized below will be submitted for introduction at the Board of Supervisors meeting on Tuesday, December 15, 2009. Together this legislation constitutes the final legislative step necessary to authorize the formation of a special tax district for the purpose of financing energy and water conservation and renewable energy improvements to privately owned properties, also known as the “San Francisco Sustainable Financing Program.”

**Background**

*Mello-Roos Community Facilities Act and the City’s Special Tax Financing Code*

The Mello-Roos Community Facilities Act of 1982 (the “Act”) allows local governments in California to finance community facilities and services through the levy of special taxes. In August 2008, the City adopted a Special Tax Financing Code (codified in Article 43.10 of the Administrative Code, the “Code”) that, as amended, incorporates by reference the Act as a method for financing and refinancing the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements on privately-owned property or buildings within the proposed special tax district as described below. The Code authorizes the Board to establish and to act as the legislative body for a special tax district. The Code further provides the ability to recover the cost of the improvements through the recordation of a special tax lien on property owned by property owners electing to participate in the program. On October 20, 2009, the Board adopted an Ordinance amending the Code to include water conservation among eligible projects and adding Section 43.10.19 to accommodate larger efficiency retrofits for affordable multifamily housing and larger commercial buildings.

The proposed district is proposed to be formed under the alternate procedure for forming special tax districts established by Section 43.10.17 and any debt financing improvements will be authorized under the alternate procedure established by Section 43.10.18 of the Code. The Code allows for an "opt in" special tax financing district whereby the special tax financing district is initially formed with no participating properties at its formation but with properties proposed for annexation to the special tax district in the future.

### **Prior Legislation and Activities Relating to the Establishment of the Program**

On October 6, 2009 the Board adopted Resolution No. 387-09 declaring its local goals and policies (the "Policies Resolution") for purposes of the Code and Act. The Policies Resolution adopting local goals and policies for community facilities districts and special tax districts provides guidance and conditions for the issuance of bonds secured by special taxes levied in a special tax district or a community facilities district established under the Code or the Act.

On November 24, 2009 the Board of Supervisors adopted i) Resolution No.464-09 (the "Resolution of Intention") that initiates the process to create the proposed district under the Code and the Act and ii) Resolution No. 465-09 (the "Resolution to Bond") that establishes a maximum aggregate amount of bonded indebtedness not to exceed \$150,000,000 financing or refinancing eligible improvements (together with the Resolution of Intention, the "Resolutions of Intent").

As described in my memorandum dated July 21, 2009 accompanying the Policies Resolution, the Controller's Office of Public Finance distributed a request seeking proposals (the "RFP") from qualified firms to administer and finance a City-sponsored financing program for privately-owned sustainability improvements, tentatively called the San Francisco Sustainable Financing Program (the "Program"). Since the release of the RFP, City staff has worked to develop the proposed legislative framework authorizing and approving the Program parameters along with the administrative and financial framework necessary to implement the Program described below.

### **District Formation and Program Legislation**

The legislative package submitted today comprises the final legislative step necessary for the formation of the District financing eligible energy efficiency, water conservation and renewable energy improvements and for the implementation of the administrative and financial parameters of the Program:

- Resolution of Formation of Special Tax District (the "Formation Resolution")
- Resolution Determining Necessity to Incur Bonded Indebtedness (the "Bonding Resolution")
- Resolution Authorizing Issuance and Sale of Special Tax Bonds ("Issuance Resolution")
- Ordinance Levying Special Taxes (the "Special Taxes Ordinance")
- Resolution Approving Program Terms and Conditions for the San Francisco Sustainable Financing Program (the "Terms and Conditions Resolution")

*Resolution of Formation of Special Tax District (the "Formation Resolution")* The Formation Resolution continues the proposed special tax district formation proceedings initiated with the adoption of the Resolutions of Intent and continues the legislative process to create the proposed district. The Formation Resolution names the proposed special tax district the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "District"); approves the boundaries of the District as recorded in the Assessor-Recorder's Office on December 8, 2009; approves the Facilities to be financed or refinanced by the District including energy efficiency, water conservation and renewable energy improvements, bond related expenses, administrative fees, and other related costs or fees (each a "Facility" as described in Exhibit A: City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Description of Facilities to be Financed by the Special Tax District); and authorizes the City to levy a special tax to pay directly for the Facilities, to pay principal and interest, and/or to make lease payments on any lease used to finance Facilities, all as secured by the recordation of a continuing special tax lien against all real property whose owners elect to annex to the District. Such special taxes applicable to parcels located in the District would be levied and collected as provided in the proposed method of apportionment (or allotment) of special taxes (Exhibit B: City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Method of Apportionment). The Formation Resolution also approves the form of the unanimous approval (each a "Unanimous Approval", Exhibit C) that would be filed by a participating property owner authorizing the levy of the special tax upon the property and specifying the payment schedule for the special tax applicable to the parcel(s). The special tax will be levied on a parcel or parcels only with the written Unanimous Approval of the owner(s) of the parcel(s) and each Unanimous Approval of the owner(s) specifies the appropriations limit for the District, the applicable rate, the method of apportionment and manner of collection of the special tax, and the approval and authorization to incur indebtedness financing the Facilities.

*Resolution Determining Necessity to Incur Bonded Indebtedness (the "Bonding Resolution")* The Bonding Resolution finds it necessary to incur bonded indebtedness and authorizes the issuance of an aggregate principal amount not to exceed \$150,000,000 financing or refinancing the Facilities, subject to each Unanimous Approval of the proposition to authorize the issuance of bonds by property owners electing to annex to the District. The Bonding Resolution also approves a maximum interest rate on any bonds not to exceed the applicable lawful maximum interest rate (currently 12 percent) and establishes a maximum term for any bonds of 40 years.

*Resolution Authorizing Issuance and Sale of Special Tax Bonds ("Issuance Resolution")* The Issuance Resolution authorizes the issuance of not to exceed \$10,000,000 of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) Special Tax Bonds, Series A (the "Bonds") pursuant to a fiscal agent agreement (the "Fiscal Agent Agreement") and finds that the issuance of the Bonds is in compliance with the Code and applicable provisions of the Goals and Policies previously approved by the Board in adopting Resolution No. 387-09. The Fiscal Agent Agreement sets the date, manner of payment, interest rate(s), interest payment dates, denominations, and other terms of the bonds. The Fiscal Agent Agreement will be made between the City and a third-party national banking association.

The Issuance Resolution also approves the form of purchase contract (the "Purchase Contract") for Bonds that will be sold to Renewable Funding LLC ("Renewable Funding"), As noted above, Renewable Funding submitted the highest ranked proposal in response to the request seeking proposals from qualified firms to administer and finance a City-sponsored sustainability financing program. The Issuance Resolution also approves the form of security agreement for Renewable Funding's bond purchase obligations under the Purchase Contract.

*Ordinance Levying Special Taxes (the "Ordinance Levying Special Taxes")* The Ordinance Levying Special Taxes authorizes and provides for the levy and collection of the special taxes on a parcel(s) that annexes to the District pursuant to the Code, at the rate(s) approved by Unanimous Approval of the owner(s) of each parcel opting to annex to the District. The special taxes will be levied in the first fiscal year in which a parcel(s) annexes to the District and in each fiscal year thereafter until payment in full of any Bonds financing Facilities issued by the City for the District and payment of all costs of administering the District. All of the collections of the special tax shall be used as provided in the Code, in the Formation Resolution and applicable Unanimous Approval for the payment of debt service on the bonds, replenishment of a debt service reserve fund, payment of costs of the Facilities, the payment of costs of administering the District, and the costs of collecting and administering the special tax.

*Resolution Approving Program Terms and Conditions for the San Francisco Sustainable Financing Program (the "Terms and Conditions Resolution")* The Terms and Conditions Resolution directs the establishment of the Program, establishes/designates the administering City agency, and establishes and publishes program terms and conditions for City property owners to apply for Program Financing and to opt into the District. The Terms and Conditions Resolution establishes minimum terms and conditions in the following Program areas:

1. Application Procedures
2. Financial Terms
3. Property Eligibility Criteria
4. Project Eligibility Criteria
5. List of Eligible Improvements
6. Energy & Water Rating Requirements
7. Regulatory Compliance

The Terms and Conditions Resolution directs the Administrator of the Program to publish and file with the Board a progress report on the Program within six months from the date the Program begins accepting applications, with annual reports thereafter. Additionally, the Terms and Conditions Resolution approves an agreement with Renewable Funding to provide administration services to the Program (the "Administration Services Agreement"), effective through December 31, 2011 with renewal options beyond the expiration date by mutual agreement, subject to certain restrictions. The Administration Services Agreement, filed with the Terms and Conditions Resolution, establishes responsibilities for program design, program implementation, program administration, and special tax administration services.

### Additional Information

The Resolutions of Intent initiating proceedings for the District were adopted by the Board of Supervisors at its meeting on Tuesday, November 24, 2009. The legislative package submitted on December 15, 2009 may be adopted at any time following the public hearing calendared for the January 12, 2010 Board of Supervisors meeting, including at that same Board meeting should all required committee review be complete.

Please note that staff will provide additional briefing materials on the overall design and implementation approach of the Program (the "Program Memorandum"). The Program Memorandum will be distributed in advance of further Board of Supervisors hearings on this legislation, once certain information regarding grant applications and other financial factors bearing on the Program is finalized.

Please contact me at 554-5956 if you have any questions in the interim. Thank you.

Cc: Mark Blake, Deputy City Attorney  
Cal Broomhead, Department of the Environment  
Mike Martin, San Francisco Public Utilities Commission  
Johanna Partin, Mayor's Office  
Harvey Rose, Budget Analyst  
Ben Rosenfield, Controller  
Starr Terrell, Mayor's Office  
Greg Wagner, Mayor's Budget Director

