

256-09

FILE NO. 091207

ORDINANCE NO.

1 [Approving Amendments to the Yerba Buena Center Redevelopment Plan to Extend the
2 Plan's Effectiveness, to extend the Redevelopment Agency's Time for Issuing and Repaying
3 Debt and to Suspend the Limit on Total Tax Increment Revenue for Affordable Housing
4 Development.]

5 **Ordinance approving amendments to the Yerba Buena Center Redevelopment Plan to**
6 **extend by one year the time limit on the effectiveness of the plan (other than the**
7 **Emporium Site) and, upon expiration of the Plan, to extend both the time for issuance**
8 **of debt and the receipt of tax increment by the San Francisco Redevelopment Agency**
9 **and to suspend the limit on the total number of dollars of tax increment revenue that**
10 **may be received by the San Francisco Redevelopment Agency under the Plan to**
11 **continue financing Low and Moderate Income Housing Fund activities under the Plan.**

11 NOTE: Additions are single-underline italics Times New Roman;
12 deletions are ~~strike-through italics Times New Roman~~.
13 Board amendment additions are double-underlined;
14 Board amendment deletions are ~~strikethrough-normal~~.

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

15 Section 1. FINDINGS FOR PLAN EXTENSION. The Board of Supervisors of the City
16 and County of San Francisco hereby finds and declare as follows:

17 a. The Board of Supervisors of the City and County of San Francisco ("Board of
18 Supervisors"), as the legislative body of the Redevelopment Agency of the City and County of
19 San Francisco ("Redevelopment Agency"), originally approved the Redevelopment Plan for
20 the Yerba Buena Center Redevelopment Project by adopting Ordinance No. 98-66 on
21 April 25, ~~1996~~1966. Since then, the Board of Supervisors has amended the Yerba Buena
22 Center Redevelopment Plan twelve times, most recently by: (1) the adoption of Ordinance
23 No. 236-00, adding the Emporium Site Area, adopted by the Board of Supervisors on
24 October 10, 2000 and approved by the Mayor on October 13, 2000, (2) the adoption of
25 Ordinance No. 211-03, extending the time limit for the establishment of loans, advances, and

1 indebtedness to the date of Plan expiration, adopted by the Board of Supervisors on
2 August 12, 2003 and approved by the Mayor on August 22, 2003, and (3) the adoption of
3 Ordinance No. 1-05, extending the effectiveness of the Plan by one year as to all portions of
4 the Yerba Buena Redevelopment Plan Area other than the Emporium Site Area (the "Original
5 Plan Area"), adopted by the Board of Supervisors on January 4, 2005 and approved by the
6 Mayor on January 8, 2005. All references herein to the "Plan" shall mean the Yerba Buena
7 Center Redevelopment Plan, as amended. The Plan contains several limitations on the use
8 of property taxes received pursuant to California Health and Safety Code Section 33670
9 previously imposed by the Community Redevelopment Law, California Health and Safety
10 Code Sections 33000 et seq. (All future section references are to the California Health and
11 Safety Code unless otherwise noted.)

12 b. The Plan presently expires as to the Original Plan Area on January 1, 2010,
13 after which time the Redevelopment Agency has no authority to act with regard to the Original
14 Plan Area pursuant to the Plan except to pay previously incurred indebtedness, to comply with
15 its housing obligations and to enforce existing covenants, contracts or other obligations. (The
16 Emporium Site Area will remain subject to the Plan for thirty years from the adoption date of
17 Ordinance No. 236-00.)

18 c. The Plan imposes a \$600 million limit on the total amount of tax increment
19 revenue that the Redevelopment Agency may receive with regard to the Original Plan Area
20 cumulatively over the life of the Plan for redevelopment activities. The total amount of tax
21 increment revenue received or projected to be received by the Redevelopment Agency with
22 regard to the Original Plan Area over the life of the Plan is over \$516,647,829.

23 d. Under Section 33333.6(b), a redevelopment agency may not pay indebtedness
24 or receive property taxes after the date that is ten years following the termination of any
25 redevelopment plan initially adopted before 1994. In accordance with Section 33333.6(b), the

1 Plan currently prohibits the Redevelopment Agency from repaying any debt incurred for the
2 Plan with regard to the Original Plan Area after January 1, 2020.

3 e. On July 24, 2009, the California Legislature enacted, in a special legislative
4 session, Assembly Bill No. 26 (Statutes 2009, Chapter 21), which added Sections 33690 and
5 33690.5 and requires the Redevelopment Agency to make a payment estimated to be \$28.7
6 million in fiscal year 2009-10 and \$5.9 million in fiscal year 2010-11 for deposit into the
7 Educational Revenue Augmentation Fund of the City and County of San Francisco (the
8 "ERAF"). As a statute enacted at a special session of the California Legislature, Assembly Bill
9 No. 26 is effective on October 23, 2009, the 91st day after adjournment of the special session.
10 Cal. Constitution, Art. 4, Section 8 (c). Under Assembly Bill No. 26, the California Director of
11 Finance shall notify the Redevelopment Agency of the exact amount due in fiscal year 2009-
12 10 by November 15, 2009 and the amount due in fiscal year 2010-11 by November 15, 2010.
13 Upon the effective date of Assembly Bill No. 26, the Redevelopment Agency is required to
14 remit the amount due in fiscal year 2009-10 to the ERAF by May 10, 2010.

15 f. Assembly Bill No. 26 also added Section 33331.5 to provide that when a
16 redevelopment agency is required to make an ERAF payment pursuant to Section 33690 and
17 the agency has allocated the full amount of the payment, the legislative body may amend a
18 redevelopment plan adopted before 1994 to extend by one year the time limit on the
19 effectiveness of the plan (an "ERAF Extension"). Section 33331.5 also provides that when an
20 ERAF Extension is adopted, neither the legislative body nor the redevelopment agency is
21 required to comply with the process for plan amendments otherwise required by the
22 Community Redevelopment Law, including but not limited to the requirement to make the
23 payment to affected taxing entities required by Section 33607.7.

24 g. Under Section 33333.6 (b), an ERAF Extension also has the effect of extending
25 by one year the time limit under a plan to receive property taxes and repay indebtedness.

1 h. The Redevelopment Agency has allocated the full ERAF payment of \$28.7
2 million for fiscal year 2009-10 by amending its budget for fiscal year 2009-10, under Agency
3 Resolution No. 108-2009, a certified copy of which is on file with the Clerk of the Board of
4 Supervisors in File No. 091207. The Board of Supervisors, by Resolution
5 No. 473-09, has approved the amendment to the Agency's budget which provides
6 for the allocation of the funds to ERAF. Accordingly, the Plan (with regard to the Original Plan
7 Area) qualifies for an ERAF Extension through January 1, 2011. A portion of the allocated
8 amount is tax increment revenue generated under the Plan.

9 i. A lawsuit challenging the validity of Assembly Bill No. 26 has been filed by the
10 California Redevelopment Association on the grounds that the 2009-2010 ERAF payment
11 obligation violates Article XVI, Section 16 of the California Constitution because it is not
12 sufficiently related to redevelopment purposes. If a court invalidates the 2009-10 ERAF
13 payment obligation imposed by Assembly Bill No. 26, it may also invalidate any ERAF
14 Extension which is based on an agency's allocation of funds for the ERAF payment. Any
15 such invalidation of Assembly Bill No. 26 could occur before January 1, 2011, the expiration
16 date of the Plan with respect to the Original Plan Area as extended under this Ordinance. Any
17 such invalidation, however, shall not affect the Affordable Housing Plan Amendment as set
18 forth in Section 2 below.

19 SECTION 2. FURTHER FINDINGS FOR THE EXTENSION OF TAX INCREMENT
20 AUTHORITY FOR AFFORDABLE HOUSING ACTIVITIES. The Board of Supervisors hereby
21 further finds as follows:

22 a. Upon expiration of the Plan with regard to the Original Plan Area (as extended
23 by the ERAF Extension approved in this Ordinance), the Plan will expire with regard to the
24 Original Plan Area and the Redevelopment Agency shall have no authority to act under
25 Section 33333.6 (a) except to pay previously incurred indebtedness, to comply with certain

1 housing obligations (Section 33333.8), and to enforce existing covenants, contracts, or other
2 obligations. Furthermore, Section 33333.4 provides that the Redevelopment Agency shall not
3 have the authority to establish or incur loans, advances, or indebtedness to be repaid from the
4 allocation of tax increment after Plan expiration "except as necessary to comply with
5 subdivision (a) of Section 33333.8."

6 b. To avoid the effects of expiration of the Plan with regard to the Original Plan
7 Area on the ability of the Redevelopment Agency to fulfill its affordable housing obligations,
8 this Ordinance also approves a Plan amendment extending the time for issuance of debt and
9 the receipt of tax increment under the Plan with respect to the Original Plan Area and also
10 suspending the limit on the total number of dollars of tax increment revenue that may be
11 received by the Agency under the Plan with respect to the Original Plan Area to continue
12 financing Low and Moderate Income Housing Fund activities (the "Affordable Housing Plan
13 Amendment"). The Affordable Housing Plan Amendment will become effective upon
14 expiration or termination of the ERAF Extension, whether that expiration or termination occurs
15 on January 1, 2011 or by court order at an earlier date.

16 c. Since January 1, 1976, all redevelopment agencies have had a statutory
17 obligation under Section 33413 to provide an equal number of replacement housing units
18 when they destroy or remove housing affordable by low or moderate income persons
19 ("Affordable Housing") in a redevelopment project area.

20 d. In 2000, the California Legislature added Section 33333.7 (Senate Bill
21 No. 2113), which authorized the Redevelopment Agency, with the Board of Supervisors
22 approval, to extend its tax increment revenue financing powers under any pre-1994
23 redevelopment plan "to redress the demolition of a substantial number of residential dwelling
24 units affordable to very low, low, and moderate income households during the agency's earlier
25 urban renewal efforts [prior to 1976]." (Statutes 2000, Chapter 661 § 1(a)). The California

1 Legislature found that the "Redevelopment Agency of the City and County of San Francisco,
2 due to its unique housing situation and net loss of affordable housing units in [older] project
3 areas, wishes, to the greatest extent feasible, to replace these lost units according to the
4 formulas set forth in Section 33413 of the Health and Safety Code." (Statutes 2000,
5 Chapter 661 § 1 (b)).

6 e. By virtue of its acknowledgement of the Redevelopment Agency's interest in
7 fulfilling its housing obligation to replace units lost prior to 1976, Section 33333.7 is a statute
8 similar, and related, to Section 33413.

9 f. The California Department of Housing and Community Development has
10 determined that, prior to 1976, the Redevelopment Agency demolished 14,207 units and
11 replaced 7,498 units, resulting in a net loss of 6,709 affordable units ("Agency's Housing
12 Obligation"). To date, the Redevelopment Agency has not replaced these lost units, but has
13 committed funding for the construction of approximately 875 replacement units that are in the
14 predevelopment phase.

15 g. As originally enacted, Section 33333.7 (Senate Bill No. 2113) authorized the
16 Redevelopment Agency to incur indebtedness exclusively for fulfilling the Agency's Housing
17 Obligation until the earlier of either January 1, 2014 or the Redevelopment Agency's
18 replacement of all Affordable Housing lost as a result of the implementation of redevelopment
19 plans adopted prior to 1976. Section 33333.7 also authorized the Redevelopment Agency to
20 receive tax increment funds through 2044 to repay indebtedness incurred to fund the
21 Agency's Housing Obligation.

22 h. In 2001, the California Legislature revised the Health and Safety Code to add
23 Section 33333.8 and Section 33333.6(f). Under Section 33333.8, a local legislative body
24 must suspend any time limit in a redevelopment plan for the receipt of tax increment revenue
25 and the repayment of debt, and any limit on the total amount of tax increment funds that a

1 redevelopment agency may receive for any project area, until the redevelopment agency
2 fulfills its affordable housing obligations. Section 33333.8(a)(1)(E) defines these housing
3 obligations to include "the obligation to provide replacement housing pursuant to
4 subdivision (a) of Section 33413, Article 9 (commencing with Section 33410), and other
5 similar and related statutes" and thus includes the Agency's Housing Obligation.
6 Section 33333.6(f) confirms that the suspension of plan limits provided by Section 33333.8
7 applies to redevelopment plans adopted on or before December 31, 1993. Under
8 Section 33333.6(e)(4)(B) and Section 33333.8, the Board of Supervisors may amend or
9 suspend the Plan limits as contemplated by this Ordinance without following the amendment
10 process otherwise required by the Community Redevelopment Law.

11 i. Section 33333.8 and its suspension of tax increment limits for the funding of
12 Affordable Housing applies to every redevelopment project area established under the
13 Community Redevelopment Law "[n]otwithstanding any other provision of law."
14 Section 33333.8(a).

15 j. Under Section 33333.8 and Section 33333.7, the Redevelopment Agency and
16 the Board of Supervisors have the authority to amend the Plan to extend the Redevelopment
17 Agency's authority: 1) to incur indebtedness for the exclusive purpose of fulfilling the Agency's
18 Housing Obligation until January 1, 2014 (or the date the Redevelopment Agency has
19 satisfied the Agency's Housing Obligation, if earlier); 2) if the Redevelopment Agency has not
20 fulfilled the Agency's Housing Obligation by January 1, 2014, to continue incurring
21 indebtedness for the exclusive purpose of fulfilling the Agency's Housing Obligation until the
22 date the Redevelopment Agency has satisfied the Agency's Housing Obligation; and 3) to
23 permit the Redevelopment Agency to receive additional tax increment revenue from the
24 Original Plan Area for use in fulfilling the Agency's Housing Obligation until January 1, 2044 or
25

1 later if the Redevelopment Agency must incur indebtedness after January 1, 2014 to fulfill the
2 Agency's Housing Obligation, subject only to the payment of funds to repay indebtedness.

3 k. The Board of Supervisors previously approved the following ordinances
4 extending the Redevelopment Agency's tax increment authority for the exclusive purpose of
5 financing Low and Moderate Income Housing Fund and fulfilling the Redevelopment Agency's
6 Housing Obligation: 1) in Ordinance No. 15-05, extending time limits for establishment of
7 loans, advance, and indebtedness applicable to the Embarcadero-Lower Market (Golden
8 Gateway) Redevelopment Plan, the Hunters Point Redevelopment Plan, and the India Basin
9 Redevelopment Plan; 2) in Ordinances Nos. 115-07 and 201-07, extending time limits for the
10 Redevelopment Agency's receipt of tax increment and suspending both the limit of total
11 indebtedness outstanding at any one time and the limit on the total number of dollars of tax
12 increment revenue that the Redevelopment Agency may receive under the Rincon Point-
13 South Beach Redevelopment Plan; and 3) in Ordinance No. 316-08, approving an extension
14 of time limits for issuing and repaying debt and a suspension of the limits on the total tax
15 increment that the Redevelopment Agency may receive under the Western Addition A-2
16 Redevelopment Plan.

17 l. To date, the Redevelopment Agency has made all payments to taxing entities
18 required under Section 33607.5.

19 m. At a public hearing on Tuesday, October 6, 2009, the Redevelopment Agency
20 adopted Agency Resolution No. 109-2009, a certified copy of which is on file with the Clerk of
21 the Board of Supervisors in File No. 091207. The resolution recommends that the
22 Board of Supervisors: 1) pursuant to Section 33331.5, extend by one year the effective date
23 of the Plan with respect to the Original Plan Area, and 2) pursuant to Sections 33333.8 and
24 33333.7 and prior to the expiration of the Plan with respect to the Original Plan Area, extend
25 the time for issuance of debt and the receipt of tax increment under the Plan and also

1 suspend the limit on the total number of dollars of tax increment revenue that may be received
2 by the Redevelopment Agency with respect to the Original Plan Area for the sole purpose of
3 financing Low and Moderate Income Housing Fund activities.

4 n. This Ordinance shall not be effective until the Redevelopment Agency shall have
5 adopted a policy requiring that it use, to the greatest extent feasible, any tax increment
6 revenue authorized by the Affordable Housing Plan Amendment to fulfill the Agency's Housing
7 Obligation by assisting Affordable Housing in the South of Market area.

8 o. The Board of Supervisors shall consider, in deciding whether to approve the
9 Redevelopment Agency's annual budget pursuant to Section 33606 of the California Health
10 and Safety Code, whether the Redevelopment Agency's work program includes, to the
11 greatest extent feasible, the use of tax increment revenue authorized by the Affordable
12 Housing Plan Amendment to fulfill the Agency's Housing Obligation by assisting Affordable
13 Housing in the South of Market area.

14 p. This Ordinance is exempt from the California Environmental Quality Act
15 (California Public Resources Code Sections 21000 et seq. and hereafter referred to as
16 "CEQA") because it creates a government funding mechanism that does not involve any
17 commitment to any specific project which may result in a potentially significant physical impact
18 on the environment and therefore is not a "project" under Sections 15378(b)(4) and
19 15060(c)(3) of the State CEQA Guidelines.

20 Section 3. Pursuant to Sections 33331.5, 33333.8, 33333.7, and 33333.6(e)(4)(B), the
21 Board of Supervisors of the City and County of San Francisco hereby approves the
22 Redevelopment Plan Amendment filed with the Clerk of the Board of Supervisors in
23 File No. 091207 (the "Redevelopment Plan Amendment"). The Redevelopment
24 Plan Amendment will (i) initially extend the effective date of the Yerba Buena Center
25 Redevelopment Plan by one year with regard to the Original Plan Area; and (ii) subsequently,

1 upon Plan expiration with regard to the Original Plan Area, (A) extend the time limit for the
2 establishment of indebtedness to be paid with the proceeds of property taxes with regard to
3 the Original Plan Area for the exclusive purpose of enabling the Redevelopment Agency to
4 fulfill the Agency's Housing Obligations under Sections 33333.8(a) and 33333.7(d);
5 (B) extend the time limit for the receipt of tax increment revenue with regard to the Original
6 Plan Area to repay indebtedness for the exclusive purpose of enabling the Redevelopment
7 Agency to fulfill the Agency's Housing Obligation under Sections 33333.8(a) and 33333.7(d);
8 and (C) suspend, for the exclusive purpose of fulfilling the Agency's Housing Obligation the
9 \$600,000,000 limit on the amount of tax increment funds that the Redevelopment Agency may
10 receive with regard to the Original Plan Area.

11 Section 4. Nothing in this Ordinance shall be construed to: 1) extend the effectiveness
12 of the Plan with regard to the Original Plan Area beyond January 1, 2011; 2) limit the
13 Redevelopment Agency's ability to refund, in whole or in part, any indebtedness incurred by
14 the Redevelopment Agency for any purpose so long as the refunding achieves debt service
15 savings, or 3) authorize the Redevelopment Agency to incur any indebtedness not previously
16 approved by the Board of Supervisors.

17 Section 5. The Clerk of the Board of Supervisors shall without delay (1) transmit a
18 copy of this Ordinance to the Redevelopment Agency, (2) record or ensure that the
19 Redevelopment Agency records a certified copy of this Ordinance, and (3) transmit, by
20 certified mail, return receipt requested, a copy of this Ordinance, together with a copy of the
21 Redevelopment Plan Amendment and a legal description of the Yerba Buena Center
22 Redevelopment Project Area and a map indicating the boundaries of the Yerba Buena Center
23 Redevelopment Project Area, to the Controller, the Tax Assessor, the State Board of
24 Equalization and the governing body of all taxing agencies in the Yerba Buena Center.
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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Anita L. Wood
Anita L. Wood, 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: 091207

Date Passed: December 08, 2009

Ordinance approving amendments to the Yerba Buena Center Redevelopment Plan to extend by one year the time limit on the effectiveness of the plan (other than the Emporium Site) and, upon expiration of the Plan, to extend both the time for issuance of debt and the receipt of tax increment by the San Francisco Redevelopment Agency and to suspend the limit on the total number of dollars of tax increment revenue that may be received by the San Francisco Redevelopment Agency under the Plan to continue financing Low and Moderate Income Housing Fund activities under the Plan.

November 24, 2009 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

December 08, 2009 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 091207

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/8/2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

18 December, 2009

Date Approved

Mayor Gavin Newsom