

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

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February 24, 2017

**TO:** Budget and Finance Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** March 2, 2017 Budget and Finance Committee Meeting

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<p><b>Item 1</b> <b>File 17-0128</b></p>	<p><b>Department:</b> Port Commission (Port)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would endorse the Conceptual Term Sheet between the Port, as landlord, and JPPF OP Acquisitions, LLC (Jamestown), as tenant, for a 15-year lease of approximately 20,000 square feet of space at the Pier 29 Bulkhead Building, located at Chestnut Street and the Embarcadero.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• After completion of the America’s Cup in 2013, the Port Commission focused on re-leasing the Pier 29 Bulkhead Building to (i) complement the Port’s investment in the James R. Herman Cruise Terminal and Cruise Terminal Park; (ii) provide for a reuse of a vacant facility to a public-oriented and retail-based use; and (iii) provide a venue through SFMade where the local manufacturing community can display and sell its products.</li> <li>• In December 2015, the Port Commission issued a Request for Proposals (RFP) for retail leasing of the Pier 29 Bulkhead Building. After receiving three proposals, in April 2016, the Port Commission awarded JPPF OP Acquisitions, LLC (Jamestown), an exclusive right to negotiate with the Port for a 15-year lease of approximately 20,000 square feet at the Pier 29 Bulkhead Building. The proposed term sheet is based on the Jamestown RFP, such that the terms of the proposed lease have not yet been negotiated.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The fair market rent will be determined by the Port and Jamestown after including costs of build-out for the project, with periodic fixed adjustments, estimated at the proposal stage at \$25,000 per month. Jamestown would be eligible for rent credits against the base rent for hard costs incurred for specified capital improvements, estimated at the proposal stage at \$1,182,000. Jamestown will be solely responsible for funding all project costs, estimated at \$5,830,000, subject to rent credits as described above.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• According to the Port, Jamestown will provide substantial capital investment to this vacant site, including tenant improvements, for reuse as a retail facility. Given the Port’s current capital needs and existing revenues, the Port does not have the financial capacity to undertake significant capital improvements to this facility.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT

Although this project has development costs less than \$10 million, and therefore does not meet the dollar thresholds for fiscal responsibility and feasibility analysis, the Port Commission wishes to obtain the endorsement of the Term Sheet by the Board of Supervisors. In accordance with Charter Section 2.105, the Board of Supervisors shall act by written ordinance or resolution.

## BACKGROUND

The Pier 29 Bulkhead Building located at Chestnut Street and the Embarcadero has historically been used for light industrial storage and parking. The Port rebuilt the Building following a major fire to accommodate the 34<sup>th</sup> America's Cup events in 2013. After completion of the America's Cup, the Port Commission focused on re-leasing the Pier 29 Bulkhead Building.

Consequently, in December 2015, the Port Commission issued a competitive Request for Proposals (RFP) for retail leasing of the Pier 29 Bulkhead Building. After receiving three proposals, in April 2016, the Port Commission awarded JPPF OP Acquisitions, LLC (Jamestown), an exclusive right to negotiate with the Port for a 15-year lease of approximately 20,000 square feet located at the Pier 29 Bulkhead Building. The Port and Jamestown entered into an Exclusive Negotiation Agreement (ENA) that sets forth the process, terms and conditions upon which the Port and Jamestown will negotiate terms for a lease.

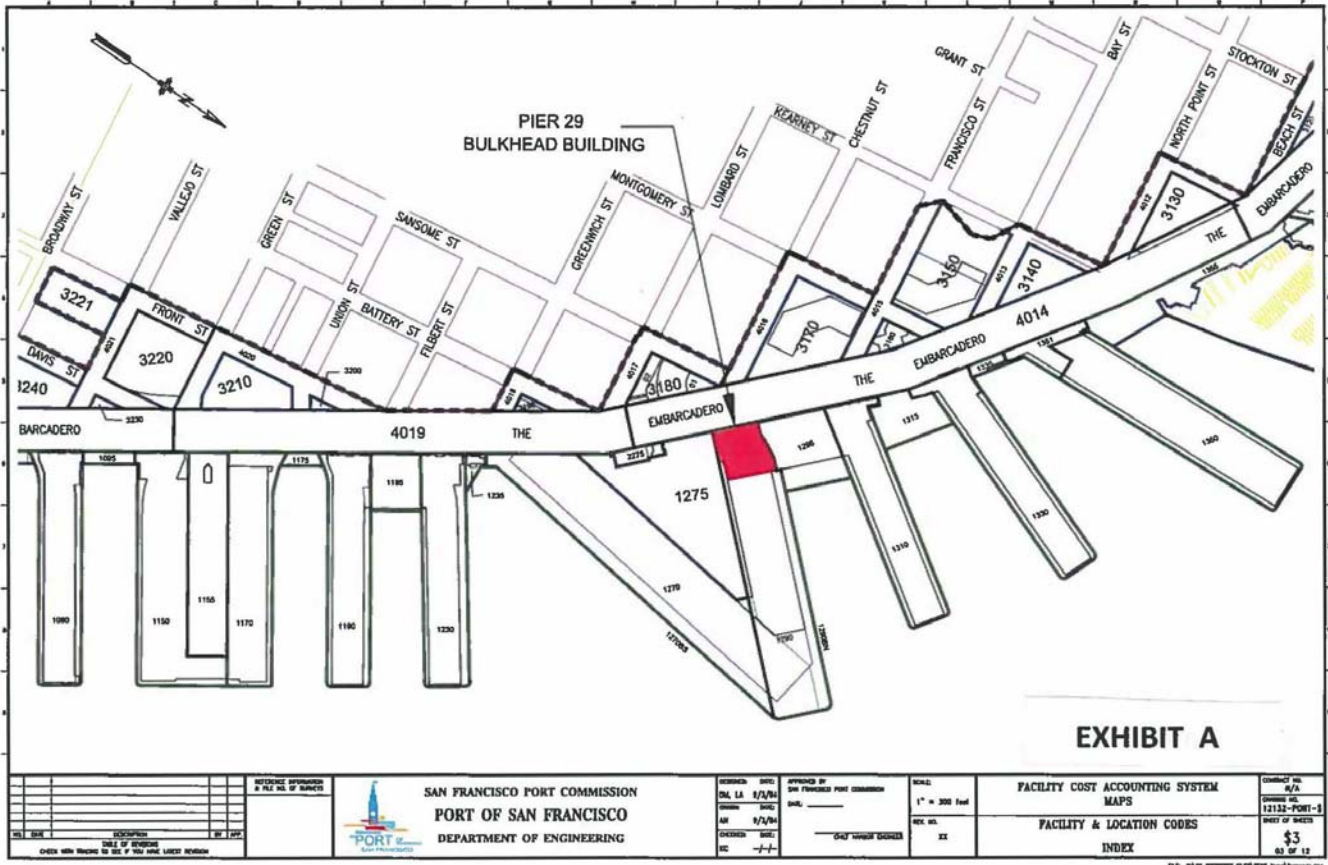
This project is intended to achieve the following Port objectives:

- (i) complement the Port's \$114,000,000 investment in the James R. Herman Cruise Terminal and Cruise Terminal Park;
- (ii) provide a retail-based use to augment the experience of visitors, cruise ship passengers, businesses and residents in the Northeast Waterfront;
- (iii) provide for an adaptive reuse of a vacant facility to a public-oriented use that conforms to the Secretary of the Interior Standards for Treatment of Historic Properties and contributes to the integrity of the Embarcadero Historic District; and
- (iv) provide, through collaboration with SFMade, a venue where San Francisco's art, design and local manufacturing community can introduce, display and sell its products.

In January 2017, the Port Commission (i) determined that the use proposed by Jamestown for a retail use in the Pier 29 Bulkhead Building is consistent with the Waterfront Land Use Plan (WLUP); and (ii) endorsed the Conceptual Term Sheet which sets forth the essential terms which the Port and Jamestown will negotiate in good faith to reach agreement on the final lease.

Exhibit 1 below illustrates the location of the Pier 29 Bulkhead Building.

**Exhibit 1: Pier 29 Bulkhead Building Location**



**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would endorse the Conceptual Term Sheet between the Port, as landlord, and JPPF OP Acquisitions, LLC (Jamestown), as tenant, for a 15-year lease of approximately 20,000 square feet of space at the Pier 29 Bulkhead Building, located at Chestnut Street and the Embarcadero.

The proposed resolution:

- Endorses the proposed term sheet for a 15-year lease of approximately 20,000 square feet of space at the Pier 29 Bulkhead Building between the Port and Jamestown;
- States that endorsement of the proposed term sheet does not commit the Board of Supervisors to approve the final lease nor set forth all material terms and conditions between the Port and Jamestown; and
- Requires Port Commission review and consideration of findings of the Pier 29 Bulkhead Building site and related facilities pursuant to the California Environmental Quality Act (CEQA) prior to Board of Supervisors approval of the final lease.

According to the proposed resolution, the term sheet is not a binding document that commits the Port to proceed with the proposed lease with Jamestown until environmental review has been completed in compliance with CEQA and the parties are able to execute a mutually acceptable lease and other transaction documents. The proposed lease will be subject to a historic preservation review for consistency with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards).

### Competitive Process

The Port selected Jamestown in April 2016 after advertising a competitive RFP in December 2015. A total of three proposals were received. The evaluation and selection process consisted of two phases. The first phase was the submittal of the written proposal. The second phase was an oral interview. The evaluation panel consisted of individuals knowledgeable on the subject matter and included staff from the Port, the Recreation and Park Department, and a community member from the Northeast Waterfront Advisory Group. The final scoring of the three proposals is detailed in Table 1 below.

**Table 1: Final RFP Scoring for Pier 29 Bulkhead Building Lease**

Proposer	Written Proposal Score (Total/Average)	Oral Interview Score (Total/Average)	Final Total Score	Final Ranking
Jamestown	339/85	352/88	691	1
IARTSF	267/67	253/63	520	2
Premier	214/54	224/56	438	3

Source: Port Commission

### Proposed Term Sheet

The subject term sheet is based on the results of the RFP as submitted by Jamestown, such that the terms of the proposed lease have not yet been negotiated. The proposed resolution endorses the term sheet between the Port, as landlord, and Jamestown, as tenant, for a 15-year lease of up to approximately 22,600 square feet of space at the Pier 29 Bulkhead Building, located at Chestnut Street and the Embarcadero. The final lease between the Port and Jamestown will be subject to negotiations between the Port and Jamestown and will then be subject to future Board of Supervisors approval. Table 2 below summarizes the terms of the proposed term sheet.

**Table 2: Summary of Proposed Term Sheet between Jamestown and the Port**

<b>Site</b>	The Pier 29 Bulkhead Building, up to approximately 22,600square feet
<b>Lease Term</b>	15 years
<b>Base Rent</b>	Fair market rent to be determined by the parties after taking into account costs of build-out for the project, with periodic fixed adjustments, estimated initially at \$25,000 per month.
<b>Participation Rent</b>	Port would receive a share of revenues, including as a result of a sale of the lease that includes reasonable and market-based return to Jamestown and the Port.
<b>Rent Credits</b>	Jamestown will be eligible for rent credits against Base Rent for certain reasonable hard costs, such as construction of a separation fire wall, electric service to the facility, sewer and pump work, life safety improvements, and other structural work, actually incurred for specified capital improvements that benefit the Port, estimated initially at \$1,182,000.
<b>Project Funding</b>	All project costs to be funded by Jamestown, estimated initially at \$5,830,000, subject to rent credits as detailed above.
<b>Waterfront Plan/Public Trust</b>	All uses permitted under the Lease shall be consistent with the public trust and Waterfront Land Use Plan, based on findings by the Port Commission in accordance with the Burton Act and City Charter.

According to the proposed term sheet, Jamestown will select subtenants in consultation with the nonprofit SFMade with top priority given to those that showcase and sell products manufactured in San Francisco by SFMade members and a secondary priority given to those that sell goods manufactured in the wider Bay Area. Jamestown will include terms for SFMade’s involvement in its letters of intent and subleases for retail space.

**FISCAL IMPACT**

**Base Rent Payable to the Port**

According to the proposed term sheet, the fair market rent for the lease will be determined by the Port and Jamestown after taking into account costs of build-out for the project, with periodic fixed adjustments, which was estimated at the proposal stage to be \$25,000 per month. In addition, Jamestown would be eligible for rent credits against the base rent for certain reasonable hard costs incurred for specified capital improvements, such as construction of a separation fire wall, electric service to the facility, sewer and pump work, life safety improvements, and other structural work, that benefit the Port, which was estimated at the proposal stage to be \$1,182,000.

According to Mr. Boris Delepine, Contract Administrator at the Port, all respondents to the RFP included preliminary estimates of build-out costs. These estimates were prepared without the benefit of advanced design or thorough inspection of the facility. As part of the final lease agreement, Jamestown will conduct more thorough design and cost estimation, from which final rent credits will be determined. Mr. Delepine also states that the final lease agreement with Jamestown will be negotiated to provide the Port with participation rent based on gross revenues including the result of a sale or transfer of the lease. According to Mr. Delepine, it is the Port's general practice to include annual increases to base rent in leases, which have yet to be negotiated with Jamestown. Currently, annual rent adjustments are negotiated with three percent annual rent increases.

### **Project Funding**

According to the proposed term sheet, Jamestown will be solely responsible for the funding of all soft and hard project costs, estimated at the proposal stage to be \$5,830,000, subject to rent credits as described above. According to Mr. Mark Lozovoy, Assistant Deputy Director of Real Estate at the Port, costs for tenant improvements, utilities and maintenance will be paid by Jamestown.

### **POLICY CONSIDERATION**

Mr. Delepine advises that the Port is seeking to undertake this proposed project with Jamestown, based on the results of the RFP, because Jamestown will provide substantial capital investment to this vacant site, including tenant improvements, for reuse as a retail facility. Given the Port's current capital needs and existing revenues, the Port does not have the financial capacity to undertake significant capital improvements to this facility. As noted above, the Port is currently seeking the Board of Supervisors approval of the proposed term sheet with Jamestown, in order to move forward with negotiating a lease with Jamestown. The final lease will be subject to future Board of Supervisors approval.

### **RECOMMENDATION**

Approve the proposed resolution.

<b>Item 2</b> <b>File 16-1314</b>	<b>Department:</b> Department of Elections (DOE)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The Department of Elections is requesting the release of \$2,067,937 on Budget and Finance Committee reserve.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Department of Elections (DOE) currently leases warehouse space at Pier 48 from the Port of San Francisco (Port) for ballot processing operations and equipment, materials, and archival ballot storage. The DOE has been on a month-to-month holdover since its three-year Memorandum of Understanding (MOU) with the Port expired in December 2015, and must vacate Pier 48 by the end of May 2017. The Port has agreed to lease Pier 31 to the DOE beginning May 1, 2017 and drafted an MOU for this purpose.</li> <li>• In FY 2014-15, the Budget and Finance Committee placed \$2,500,000 on reserve for relocation of DOE's warehouse operations, pending the submission of a lease for a new site and detailed justification of expenditures.</li> <li>• Under the current MOU, DOE pays annual rent of \$991,176 or \$11.40 per square foot per year for 86,945 gross square feet (gsf) at Pier 48. Under the proposed five-year MOU, DOE would pay annual rent of \$1,137,900 or \$16.20 per square foot per year for the first year, an increase of 14.8 percent, for 70,241 gsf at Pier 31. After the first year, monthly rent would increase by 3 to 4 percent on an annual basis as specified in the MOU.</li> <li>• The DOE would require site improvements for Pier 31, including floor leveling, the addition of a security system, restroom construction, and the installation of secure fencing for voting equipment.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The total budget for DOE site improvements and relocation costs is \$2,067,937, based on an initial scope of work by the Department of Public Works (DPW). The requested release of \$2,067,937, out of the total of \$2,500,000 placed on reserve, would leave a balance of \$432,066. The Budget and Legislative Analyst recommends that the balance of \$432,066 be returned to the City's General Fund.</li> <li>• Including the costs of utilities, janitorial services, and security services, over the five-year term of the proposed lease, the total estimated annual costs to DOE would be \$6,138,464, which would be funded from the City's General Fund and would be included in DOE's annual operating budgets, subject to appropriation approval by the Board of Supervisors.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Approve the requested release of \$2,067,934 out of the total of \$2,500,000 on Budget and Finance Committee reserve.</li> <li>• Return the balance of \$432,066, previously on Budget and Finance Committee reserve, to the City's General Fund.</li> </ul>	



## MANDATE STATEMENT

City Administrative Code Section 3.3(e) states that the Budget and Finance Committee of the Board of Supervisors has jurisdiction over the City's budget and may reserve proposed expenditures to be released at a later date subject to Board of Supervisors approval.

## BACKGROUND

The Department of Elections (DOE) currently leases warehouse space at Pier 48 from the Port of San Francisco (Port) for ballot processing operations and equipment, materials, and archival ballot storage. Pier 48 is located at the northeast tip of Mission Bay adjacent to Terry Francois Boulevard. The DOE occupies Pier 48 Shed B, an 86,945 gross square foot (gsf) steel-framed warehouse, and one of two buildings located at the pier.

The warehouse at Pier 48 is comprised of fixed programming space, the use of which does not vary depending on the stage of the election cycle, and flexible programming space, the use of which varies depending on the stage of the election cycle. Most of the fixed programming space, which accounts for less than 50 percent of total warehouse space, is allocated to the secure storage "cage"—where equipment and old election ballots are stored, and the remaining space is comprised of administrative space, restrooms, and a break area for a staff of three full-time equivalent positions (FTEs). On-site staff may increase to over 100 people during the election cycle<sup>1</sup> when the flexible program space is used for pre-election, election day, and post-election tasks.

In 2012, the Board of Supervisors approved a five-year lease between the City, on behalf of the Port, and the China Basin Ballpark Company, LLC (CBBC)<sup>2</sup> for Seawall Lot 337<sup>3</sup>, Pier 48 Shed A, Pier 48 Shed C, and Pier 48 Valley<sup>4</sup> with an option to expand the agreement to include Pier 48 Shed B (File 12-0200). CBBC is exercising their option to take possession of Pier 48 Shed B, as master tenant, and will be subleasing all of Pier 48 to Anchor Brewing Co starting in mid-2017.

By the end of 2013, the DOE began searching for a new site for its warehouse operations. The DOE has been on a month-to-month holdover since its three-year Memorandum of Understanding (MOU) with the Port expired in December 2015 and must vacate Pier 48 by the end of May 2017.

In FY 2014-15, the Budget and Finance Committee placed \$2,500,000 on reserve for relocation of DOE's warehouse operations, pending the submission of a lease for a new site and detailed justification of expenditures.

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<sup>1</sup> The election cycle, in this report, is defined as the period two months before an election until one month after.

<sup>2</sup> CBBC is a subsidiary of San Francisco Baseball Associates (dba San Francisco Giants) that was specifically established to develop, construct, and operate AT&T Park and the related parking lots.

<sup>3</sup> Location of Parking Lot A at AT&T Park.

<sup>4</sup> Pier 48 Valley is the open space between Pier 48 Shed A and Pier 48 Shed B.

**DETAILS OF PROPOSED LEGISLATION**

The Department of Elections (DOE) is requesting the Budget and Finance Committee of the Board of Supervisors to release \$2,067,937 out of the total of the \$2,500,000 previously placed on Budget and Finance Committee reserve in FY 2014-15 for relocation of the Department's warehouse operations from Pier 48 to Pier 31, which is also owned by the Port.

The DOE worked with the City's Real Estate Division, private real estate brokers, and the Port to identify a relocation site. According to Mr. Jeff Bauer, Leasing Manager at the Port, Pier 31 was the only available site that was large enough and suitable for use as a storage facility in order to use for ballot processing operations for the DOE.<sup>5</sup> The Port agreed to lease Pier 31 to the DOE and drafted an MOU for this purpose. The five-year MOU is not subject to Board of Supervisors approval because it is an agreement between two City departments. The five-year agreement provides for:

- Monthly rent payable by DOE to the Port of \$94,825 for the first year and an annual increase of between 3 and 4 percent (specified by year in the MOU) beginning May 1, 2017 over the term of the five-year agreement<sup>6</sup>
- Utilities, janitorial services, and security services to be paid by the DOE
- Options to extend the MOU for a total of five years (one three-year option and one-two year option) at rent levels equal to the greater of (a) current rent levels increased by three percent or (b) the then-current parameter rent<sup>7</sup> approved by the Port Commission

Pier 31 is located at the northeast edge of North Beach on the Embarcadero between Bay Street and Chestnut Street. The DOE would occupy a 70,241 gross square foot building<sup>8</sup>, one of two buildings located on the pier. The Port is currently renovating the site<sup>9</sup>, and the date when the DOE would take possession depends on when those renovations are completed, but would occur no later than May 1, 2017. According to Mr. Bauer, the majority of renovations are complete, and the remaining renovations are on track to be completed in time for move-in on May 1.

The DOE would require site improvements beyond the renovations completed by the Port, including floor leveling, the addition of a security system, restroom construction, and the installation of secure fencing for voting equipment. The Department of Public Works (DPW) has drafted an initial scope of work for these site improvements and provided cost estimates for the improvements and relocation costs.

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<sup>5</sup> Pier 19 and Pier 23 were also available, but both are planned for retail or active recreation uses.

<sup>6</sup> The monthly rent of \$94,825 in the first year equals \$1.35 per square foot for 70,241 square feet. According to Mr. Bauer, rent of \$1.35 per square foot is consistent with the Port's FY 2016-17 rental rate schedule.

<sup>7</sup> Parameter rent refers to the Port's minimum rental rates approved by the Port Commission on an annual basis. Mr. Bauer states that minimum parameter rental rates are determined for each of the Port's properties are based on market rate surveys and Port leasing activity for the previous year. The Port contracts with a third party consultant to review the proposed rental rate schedule before seeking approval by the Port Commission. Keyser Marston Associates (KMA) reviewed the FY 2016-17 rental rate schedule.

<sup>8</sup> This is a reduction of 16,704 gsf—or 19%—compared to the warehouse space of 86,945 gsf at Pier 48.

<sup>9</sup> According to Mr. Bauer, site renovations, including the replacement of the roof, structural columns, and overhead lighting, will cost the Port approximately \$8 million.

The DOE expects to occupy both sites during the month of May 2017.<sup>10</sup> DOE warehouse staff would move equipment and other assets from Pier 48 to Pier 31 during this time. If construction or other factors prevent staff from working at either site during or after the transition, they would work from the Department's main office in City Hall. Construction for the site improvements is scheduled to begin in June 2017 and end in December 2017. According to Mr. Sandro Burgos, Financial Manager at the Department of Elections, the Department expects site improvements to be completed before the start of pre-election activities in March 2018.<sup>11</sup>

## FISCAL IMPACT

### Site Improvements and Relocation Costs

The total budget for DOE site improvements and relocation costs is \$2,067,937, as shown in Table 1 below. The DOE is now requesting release of \$2,067,937 placed on Budget and Finance Committee reserve in FY 2014-15 to cover relocation costs. The requested release of \$2,067,937, out of the total of \$2,500,000 placed on reserve, would leave a balance of \$432,066. The Budget and Legislative Analyst recommends that the balance of the reserve funds of \$432,066 be returned to the City's General Fund.

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<sup>10</sup> The DOE would only pay rent for Pier 48 in May. According to Mr. Bauer, the Port has agreed to waive the first month of rent at Pier 31.

<sup>11</sup> The next scheduled election will be held on June 5, 2018. Mr. Burgos states that if construction extends into this period, the Department will make every effort to minimize its interference with the election process.

**Table 1: Proposed Tenant Improvement Costs**

<b>Description</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Total</b>
Office	700 sf	\$250 per sf	\$175,000
Staff Break Room	300 sf	250 per sf	75,000
Restroom	500 sf	250 per sf	125,000
Multi-purpose room	400 sf	250 per sf	100,000
Vertical Circulation	500 sf	250 per sf	125,000
PSD/Security Checkpoint	350 sf	250 per sf	87,500
Storage (Soft Material/Office supplies)	100 sf	250 per sf	25,000
<b>Subtotal, Administrative Space</b>	<b>2,850 sf</b>	<b>\$250 per sf</b>	<b>\$712,500</b>
Security Gate (at lease space boundary)	111 lf*	120 per lf	\$13,320
Standard Security Fence	676 lf	120 per lf	81,120
Floor Leveling			35,000
Security System			25,000
Mechanical			85,000
Plumbing			85,000
Electrical			75,000
Fire Protection			50,000
Furniture, Fixture, and Equipment			13,000
Moving			30,000
<b>Subtotal, Base Cost</b>			<b>\$1,204,940</b>
<b>Soft Costs</b>			
Architecture and Project Management			\$198,000
Structural Engineering			74,250
Mechanical/Plumbing			111,375
Electrical			111,375
Construction Management Services			135,000
Cost Estimator			20,902
Permits			24,098
<b>Subtotal, Soft Costs</b>			<b>\$675,000</b>
Project Contingency (10%)			187,994
<b>Total Project Costs</b>			<b>\$2,067,934</b>

Source: Preliminary Project Budget Analysis, Attachment B

\*linear feet

According to Mr. Tony Leung, Senior Architect at DPW, DPW estimated the unit cost for administrative space at \$250 per sf based on a review of comparative bids. Mr. Leung also states that the project will require structural work since it involves building a structure inside of the pier to house administrative space as well as restroom construction. DPW will obtain more detailed cost estimates from an independent consultant<sup>12</sup> at least twice prior to going to bid for construction services to ensure that the scope of work is feasible based on budget constraints and to plan contingencies in the event that bids come in lower or higher than anticipated. After completion of the design phase, the construction firm for the DOE site improvements will be

<sup>12</sup> The independent consultant would be selected from an as-needed pool of cost-estimators that have been previously selected through a competitive process as part of a Request for Qualifications (RFQ).

selected by DPW based on a competitive bid process pursuant to Administrative Code Chapter 6.

### **Pier 31 Rent and Operating Expenses**

The monthly rent for the space currently leased by DOE at Pier 48 is \$82,598 per month, equal to \$0.95 per square foot for 86,945 gsf. The proposed monthly rent for the space to be leased by DOE at Pier 31 in the first year is \$94,825 or \$1.35 per square foot for 70,241 gsf. Although the DOE would receive a reduction of 16,704 gsf in the proposed Pier 31 location as compared to the existing space in Pier 48, the increase in rent in the first year is \$12,227 per month or 14.8 percent. The total annual rent would be \$1,137,900, an increase of \$146,724 or 14.8 percent, for the year. As mentioned previously, the Port is waiving the first month's rent at Pier 48. Therefore, annual rent for Year 1 would include 11 months of rental payments. After the first year, monthly rent would increase by 3 to 4 percent on an annual basis as specified in the MOU. As noted above, the proposed MOU, which specifies the terms of the new lease between the Port and DOE, is not subject to Board of Supervisors approval.

The proposed monthly rent reflects the minimum parameter rental rate for Pier 31 approved by the Port Commission in 2016. According to Mr. Bauer, the increase in rent reflects higher property values in the Northeast Waterfront, where Pier 31 is located, compared to South Beach/China Basin, where Pier 48 is located.

In addition to the annual rent for Pier 31, DOE would be responsible for paying annual utilities, janitorial services, and security services, at an estimated cost of \$23,040.<sup>13</sup> Assuming operating costs increase at an annual rate of 3 percent, the total estimated cost of the proposed five-year MOU would be \$6,138,464, as shown in Table 2 below.

**Table 2: Total Costs by Year under Proposed MOU**

<b>Year</b>	<b>Annual Rent</b>	<b>Annual Operating Costs*</b>	<b>Total Cost</b>
Year 1	\$1,043,079**	\$23,040	\$1,066,119
Year 2	1,180,049	23,731	1,203,780
Year 3	1,222,193	24,443	1,246,636
Year 4	1,264,338	25,176	1,289,514
Year 5	1,306,483	25,932	1,332,415
<b>Total</b>	<b>\$6,016,142</b>	<b>\$122,322</b>	<b>\$6,138,464</b>

Source: MOU, DOE

\*Assumes annual increase of 3%

\*\*Annual rent for Year 1 includes 11 months of rent, as the Port would waive rent for the first month

According to Mr. Burgos, the funding source of the proposed MOU, including rent and related costs, would be the City's General Fund, and would be included in DOE's annual operating budgets, subject to appropriation approval by the Board of Supervisors.

<sup>13</sup> Mr. Burgos assumes operating costs at Pier 31 would be comparable to current operating costs at Pier 48—\$23,040

**RECOMMENDATIONS**

1. Approve the requested release of \$2,067,934 out of the total of \$2,500,000 on Budget and Finance Committee reserve.
2. Return the balance of \$432,066, previously on Budget and Finance Committee reserve, to the City's General Fund.

<b>Item 3</b> <b>File 17-0175</b>	<b>Department:</b> Department of the Environment
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The Department of the Environment is requesting the release of \$110,026 on Budget and Finance Committee reserve.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• As part of the FY 1998-99 State budget, the California Public Utilities Commission (CPUC) awarded \$13,000,000 of grant funds to San Francisco to address environmental issues caused by the former PG&amp;E Hunters Point Power Plant and Potrero Power Plant.</li> <li>• Over the past 17 years, since the approval of the \$13,000,000 of grant funds, the Budget and Finance Committee approved seven releases of reserved funds totaling \$12,889,974, leaving a remaining \$110,026 balance currently on reserve.</li> <li>• These funds were used for community, technical and nonprofit agencies for (a) locally-grown produce and food security, (b) health benefits, (c) toxics and air quality improvement, (d) reduced reliance on fossil-fueled power plants, and (e) economic development and employment opportunities in the southeast area of the City. The grant also funded staff in the Department to support and monitor the awarded funds.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Department of the Environment will allocate the requested \$110,026 to fund salary and fringe benefit expenses for 0.60 FTE positions working on Environmental Justice programs in the Department of the Environment, including (a) \$39,998 for 0.20 FTE 5644 Senior Environmental Specialist and (b) \$70,028 for 0.40 FTE 5642 Environmental Specialist.</li> <li>• This release will provide funding for staff through FY 2017-18. After FY 2017-18, the Department cannot project available revenue sources to continue funding these positions.</li> <li>• The Department of the Environment received approximately \$3 million of additional funding and approximately \$725,000 of in-kind support from other sources by leveraging the original \$13,000,000 of State grant funds over the extended 17-year grant period.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the requested release of \$110,026 on Budget and Finance Committee reserve.</li> </ul>	

## MANDATE STATEMENT

Administrative Code Section 3.3(e) provides for the committee of the Board of Supervisors having jurisdiction over the budget (Budget and Finance Committee) to place funds on reserve. These funds may be released by the Budget and Finance Committee.

## BACKGROUND

As part of the FY 1998-99 State budget, the California Public Utilities Commission (CPUC) awarded \$13,000,000 of grant funds to San Francisco to address environmental issues caused by the former PG&E Hunters Point Power Plant and Potrero Power Plant. Recognizing that residents of adjacent neighborhoods were disproportionately harmed by the two electric power generation plants in their communities, this State environmental justice program grant was intended to address energy and environmental and related public health concerns. In FY 1998-99, the Board of Supervisors appropriated these grant funds and placed the entire \$13,000,000 on Budget and Finance Committee reserve, pending the submission of budget and program details by the City's Department of the Environment.

In April 2001, the Department of the Environment working with the Office of Economic and Workforce Development submitted an Environmental Justice Program to the Board of Supervisors, which addressed environmental pollution, health and energy concerns in the southeastern areas of the City. Specifically, the Environmental Justice Program identified the need to support energy efficiency, brownfields cleanup, health-related issues and support for community non-profit organizations serving the Potrero Hill and Bayview Hunters Point neighborhoods.

Over the past 17 years, since the approval of the \$13,000,000 of grant funds in FY 1998-99, the Budget and Finance Committee has approved seven releases of reserved funds totaling \$12,889,974, as summarized in Table 1 below.

**Table 1: Board of Supervisors Approved Releases of Reserved Funds from \$13,000,000**

File No.	Approval Date	Amount Released	Remaining Balance
<b>Original Grant</b>	<b>FY 1998-99</b>	<b>\$13,000,000</b>	
1)01-0257	5/9/2001	\$9,615,121	\$3,384,879
2) 03-0085	2/2/2003	342,186	3,042,693
3) 03-1516	10/1/2003	576,544	2,466,149
4) 08-0579	6/4/2008	813,488	1,652,661
5) 09-0496	6/3/2009	793,264	859,397
6) 10-0696	11/10/2010	308,709	550,688
7) 15-0016	3/4/2015	<u>440,662</u>	110,026
<b>Total</b>		<b>\$12,889,974</b>	



The released funds have primarily been used to fund community groups, technical organizations and nonprofit agencies that (a) provide locally-grown produce and food security, (b) improve health benefits and outcomes, (c) minimize toxics and improve indoor and outdoor air quality, (d) reduce electrical demand and the City's reliance on fossil-fueled power plants, and (e) promote economic development and employment in environmental and related fields through education and job training in the southeast area of the City. The grant was also used to fund staff positions in the Department of the Environment to support and monitor the awarded funds. As shown in Table 1 above, there is a current remaining balance of \$110,026 on reserve.

## DETAILS OF PROPOSED LEGISLATION

The Department of the Environment is requesting the release of the final \$110,026 on Budget and Finance Committee reserve.

## FISCAL IMPACT

The Department of the Environment will allocate the requested \$110,026 to fund salary and benefit expenses for portions of two positions working on the Environmental Justice programs in the Department of the Environment, as shown in Table 2 below.

**Table 2: Requested Release of Reserved Funds**

	<b>Amount</b>
<b>Salary and Benefits</b>	
5644 Senior Environmental Specialist (.20 FTE)	\$39,998
5642 Environmental Specialist (.40 FTE)	70,028
<b>Total (.60 FTE)</b>	<b>\$110,026</b>

According to Mr. Joseph Salem, Manager of Finance and Administration at the Department of the Environment, the remaining \$110,026 grant funds will provide partial funding for these two positions through FY 2017-18; these two positions are responsible for managing several environmental justice programs<sup>1</sup>, which are also funded with Recology impound account and other Department grant funds. After FY 2017-18, the Department cannot project available revenue sources to continue funding these positions. The Department of the Environment does not currently receive any direct General Fund revenues.

<sup>1</sup> The environmental justice programs currently include (a) reducing toxic pesticides and household chemicals in low-income housing development sites, including the Rental Assistance Demonstration and HOPE SF housing sites, (b) conducting assessments of brownfield properties on the Bayview Hunters Point shoreline to support development of the Blue Greenway and the 900 Innes Avenue site for the India Basin Shoreline Park, (c) reducing illegal dumping of used motor oil and abandoned materials in the Bayview Hunters Point community through education, outreach and increased enforcement, (d) coordinating with government agencies and nonprofit groups to address pollution issues through the Bayview Hunters Point Environmental Justice Task Force, and (d) providing grant management services for community garden projects to promote food security.

**Overall Uses of Grant Funds**

Of the total \$13,000,000 State grant received in FY 1998-99, \$9,147,741 or 70.4% was awarded to nonprofit community groups and another \$1,231,359 or 9.5% was awarded to technical contractors, both private and nonprofit. Ms. Anne Eng, the Environmental Justice Program Manager for the Department of the Environment advises that all of these awards were based on competitive Request for Proposals (RFP), conducted at various times over the grant period. Another \$2,423,381 or 18.6% of the overall \$13,000,000 grant was used for City salaries and fringe benefit expenses.

**Extended Time for Grant**

As noted above, this \$13,000,000 State grant was awarded to the City in FY 1998-99, or over 17 years ago. According to Ms. Eng and Mr. Salem, and as shown in Table 1 above, the Department of the Environment requested \$9,615,121 in 2001 and awarded significantly larger grants to various nonprofit organizations initially. However, over the subsequent years, the Department awarded smaller grants from this ongoing State grant and was able to use the remaining State environmental justice grant funds to leverage and obtain funding from other sources for additional environmental justice programs. Ms. Eng reported that the Department received approximately \$3 million of additional funding and approximately \$725,000 of in-kind support from other sources by leveraging the original \$13,000,000 of State grant funds over the extended period.

**RECOMMENDATION**

Approve the requested release of \$110,026 on Budget and Finance Committee reserve.

<p><b>Item 4</b> <b>File 17-0129</b></p>	<p><b>Department:</b> General Services Agency - Department of Public Works (DPW)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the second cooperative agreement between Public Works and Caltrans concerning the design and construction of the Lombard Street Vision Zero Project, including pedestrian safety, transit improvements, and utility upgrades along Lombard Street between Francisco Street and Van Ness Avenue. The proposed resolution would also make environmental findings.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• Vision Zero SF is a policy adopted by the City and County of San Francisco in 2014 in order to decrease roadway injuries and deaths. The City of San Francisco has ongoing Vision Zero projects on 19<sup>th</sup> Avenue, Van Ness Avenue and Lombard Street.</li> <li>• Lombard Street is also State Route 101 from Van Ness Avenue to the intersection of Richardson and Francisco Streets, and therefore is under jurisdiction of Caltrans. Due to Caltrans’ right of way, Public Works must sign a cooperative agreement for all design and implementation phases of the project in order to get an encroachment permit.</li> <li>• The proposed cooperative agreement specifies the responsibilities of the City and Caltrans in executing the project. The City is the implementing agency for all phases of the project. Caltrans is responsible for providing independent quality assurance and for issuing an encroachment permit after accepting the final plans, specifications, and estimate package. Caltrans is also responsible for providing a right-of certification, funding verification, and the quality management for the construction.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Under the proposed cooperative agreement, the City is responsible for the environmental, design and construction costs of the project, estimated to be \$11,095,215, previously appropriated by the Board of Supervisors in the Public Works budget.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution</li> </ul>	

## MANDATE STATEMENT

According to City Charter Section 2.105, the Board of Supervisors shall act only by written ordinance or resolution. According to Mr. John Malamut, Deputy City Attorney, the proposed cooperative agreement between the California Department of Transportation (Caltrans) and the Department of Public Works (Public Works) requires Board of Supervisors approval by resolution because the cooperative agreement commits the City to use funds for the improvement of Lombard Street between Francisco Street and Van Ness Avenue, which is State Route 101, and therefore, under the jurisdiction of Caltrans.

## BACKGROUND

Vision Zero SF is a policy adopted by the City and County of San Francisco in 2014 in order to decrease roadway injuries and deaths. As part of a two-year plan, Public Works, the Department of Public Health, San Francisco Planning Department, San Francisco Municipal Transportation Agency (SFMTA), San Francisco Public Utilities Commission, and the San Francisco Police Department (SFPD) are working on improving pedestrian safety along the 125 miles of identified high-injury roadways. The City of San Francisco has ongoing Vision Zero projects on 19<sup>th</sup> Avenue, Van Ness Avenue and Lombard Street.

According to Ms. Shannon Cairns, Project Manager for Public Works, Public Works is responsible for the design and construction of the Lombard Street Vision Zero Project. On March 15, 2016, after the required environmental planning documents were submitted, the SFMTA Board of Directors adopted a resolution approving the project elements along the Lombard Street corridor, between Van Ness Avenue and Doyle Drive. The project has both near-term and longer-term improvements, including:

- Signal timing adjustments, such as installing leading pedestrian interval signs
- Intersection daylighting, or removing parking spots adjacent to curbs at intersections
- High visibility crosswalks
- Advanced limit (or stop) lines for cars
- Bulbs (sidewalk extensions for both pedestrians and public transit stops)

### **Partner with Caltrans**

Lombard Street is also State Route 101 from Van Ness Avenue to the intersection of Richardson and Francisco Streets, and therefore is under jurisdiction of Caltrans. Due to Caltrans' right of way, Public Works has to execute a cooperative agreement with Caltrans for all phases of the Project as a prerequisite for Caltrans issuing an encroachment permit for the Project.

The Board of Supervisors approved a resolution on May 5, 2016 (File 16-0324), approving the cooperative agreement for Public Works pay \$200,000 to Caltrans to review and approve the Project Initiation Document, which is a Caltrans-required document prior to receiving a Caltrans encroachment permit. This is the "K" phase of the Project per Caltrans process, and comes

before Phases 0-3. According to State law, Caltrans is able to require reimbursement from local agencies for the cost of reviewing and approving a Project Initiation Document.

### **DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve the second cooperative agreement between Public Works and Caltrans concerning the design and construction (these are the 0-3 Phases of the Project per Caltrans process) of the Lombard Street Vision Zero Project, including pedestrian safety, transit improvements, and utility upgrades along Lombard Street between Francisco Street and Van Ness Avenue. The proposed resolution would also make environmental findings.

The proposed cooperative agreement specifies the responsibilities of the City and Caltrans in executing the project. The City is the implementing agency for all phases of the project. Caltrans is responsible for providing independent quality assurance and for issuing an encroachment permit after accepting the final plans, specifications, and estimate package. Caltrans is also responsible for providing a right-of-way certification, funding verification, and the quality management for the construction.

According to Ms. Cairns, the execution of this cooperative agreement is a prerequisite for Caltrans issuing an encroachment permit for the Project. Caltrans specifies the terms as a matter of policy. Public Works has entered into cooperative agreements with Caltrans previously on Vision Zero projects, such as for the 19<sup>th</sup> Avenue Project, whose second cooperative agreement regarding encroachment permits was executed on July 18, 2016.

#### **Environmental Findings**

In March 2014, the Planning Commission certified the Transit Effectiveness Project Final Environmental Impact Report, and the SFMTA Board of Directors adopted findings under the California Environmental Quality Act (CEQA).

### **FISCAL IMPACT**

Under the proposed cooperative agreement, the City is responsible for the environmental, design and construction costs of the project, estimated to be \$11,095,215, previously appropriated by the Board of Supervisors in the Public Works budget.

### **RECOMMENDATION**

Approve the proposed resolution.

<p><b>Items 6 and 7</b>  <b>Files 16-1288 and 16-1289</b>  <i>(Continued from February 16, 2017)</i></p>	<p><b>Department:</b>                  Office of the Public Defender (OPD)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• <u>File 16-1288</u> appropriates \$2,241,797 of General Reserve to the Public Defender’s Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18; and <u>File 16-1289</u> amends the Annual Salary Ordinance to add 13 new positions in FY 2016-17 increasing to 15 positions in FY 2017-18 in the Public Defender’s Office.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Board of Supervisors previously approved an appropriation of \$1.5 million to fund legal services to immigrants provided by community based organizations in FY 2016-17.</li> <li>• The Public Defender is requesting 13 new positions in FY 2016-17 and 15 positions in FY 2017-18 to process an estimated 400 to 600 cases annually, providing legal services to immigrants facing detention and deportation.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Budget and Legislative Analyst estimates that the Public Defender’s Office will not be able to hire new positions in FY 2016-17 prior to May 1, 2017, therefore, the number of FTEs in FY 2016-17 should be reduced from 3.25 to 2.17.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The Administrative Code provides for a General Reserve equal to 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, projected deposits to the General Reserve are \$14.6 million in FY 2017-18.</li> <li>• The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and the proposed ordinance would appropriate \$2.1 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.6 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.6 million, from \$14.6 million to \$18.2 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.6 million in FY 2017-18.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend File 16-1288 to reduce the appropriation by (a) \$139,368 from \$2,241,797 to \$2,102,429; and (b) place FY 2017-18 salaries and fringe benefits of \$301,098 on Budget and Finance Committee reserve pending submission of detailed caseload information by the Public Defender.</li> <li>• Amend File 16-1289 to (a) reduce the FY 2016-17 FTE from 3.25 FTE to 2.17 FTE (see Tables 3 and 4 above); and (b) designating seven of the 15 new positions (four 8177 Attorneys, two 8173 Legal Assistants, and one 8108 Senior Legal Process Clerk) as limited tenure for three years.</li> <li>• Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

## BACKGROUND

There are approximately 115,000 non-citizen residents of San Francisco<sup>1</sup> of which 44,000 are estimated to be undocumented immigrants<sup>2</sup>. Based on Immigration Customs Enforcement (ICE) fingerprint data, since 2010, an average of approximately 7,000 immigrants were deported each year from the San Francisco Immigration Court, which falls under the jurisdiction of the Executive Office for Immigration Review under the U.S. Department of Justice. The numbers of individuals who actually appear before the San Francisco Immigration Court are lower because many deportations occur without due process and without an opportunity to appear before a judge at a hearing in order to defend against removal. Based on the stated intent of the administration of President Trump, detentions and deportations are expected to expand in 2017.

In FY 2015-16, approximately 2,200 immigrants were detained during their deportation proceedings in the San Francisco Immigration Court, which is the only immigration court in Northern California. Immigration courts across the country have substantial backlogs, and San Francisco is no exception, with processing time for all cases averaging 704 days, or nearly two years, for cases completed in FY 2015-16. Immigrant detainees waited an average of 107 days, or approximately three months, for their case to be heard in San Francisco in FY 2015-16.<sup>3</sup> While in detention, individuals are separated from their families and unable to access materials and evidence to prepare for their cases.

The vast majority of individuals who are deported are not represented by an attorney in their immigration court proceedings. An analysis of immigration court records, conducted by the California Coalition for Universal Representation, found that 67 percent of detained immigrants in San Francisco lacked representation by an attorney over a three-year period from 2012 to 2015. The analysis found that only 5 percent of unrepresented detainees obtained relief (i.e., asylum, cancellation of removal, or termination of case) compared to 35 percent of represented detainees as a result of their proceedings in the San Francisco Immigration Court.

### **Funding to Community-Based Organizations to Provide Legal Services**

In January 2017, the Board of Supervisors approved a supplemental appropriation of \$1,500,000 to the Mayor's Office of Housing and Community Development (MOHCD), the City Administrator's Office of Civic Engagement and Immigrant Affairs (OCEIA), and the Human Rights Commission (HRC) to fund legal representation, pathways to citizenship, public outreach,

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<sup>1</sup> U.S. Census Bureau American Community Survey (ACS) 2014 (5-Year Estimates)

<sup>2</sup> Migration Policy Institute (MPI) analysis of 2014 ACS

<sup>3</sup> TRAC Immigration, Syracuse University (<http://trac.syr.edu/immigration/>)

and rapid response social services to be provided by community-based organizations in FY 2016-17 (File No. 16-1344).

### **The Public Defender's Office New Legal Unit for Immigration Services**

The Public Defender's Office currently has one attorney dedicated to handle immigration cases, including some cases in immigration court. The Public Defender is proposing to create a new legal unit staffed with 15 new positions of 9 attorneys, 4 paralegals, and 2 senior legal process clerks to handle cases of detained immigrants in immigration court. The new legal unit would also handle some impact litigation cases<sup>4</sup>. In addition to handling detained deportation cases, the Public Defender will work with community-based organizations in the following:

- Advise non-citizens of the immigration consequences of criminal convictions.
- Create a standard referral form to refer cases between the Public Defender and the collaborative community-based organization members, and refer cases where appropriate.
- Begin working on clients' immigration matters while they are still in county custody to maximize the efficiency of the immigration cases.
- Collaborate on post-conviction relief, where appropriate.
- Assist community-based organizations in obtaining criminal court documents, where relevant.

The 9 attorneys are expected to handle a total of 400 to 600 detainee cases per year. According to Ms. Angela Auyong, Public Defender Office Manager, the average time expected to be spent on each detained immigrant case will be approximately 30 attorney hours, 17 paralegal hours, and 7 legal process clerk hours.

The Public Defender proposes to provide universal representation for detainees with proceedings at the San Francisco Immigration Court. As noted above, there were approximately 2,200 proceedings for detained immigrants at the San Francisco Immigration Court in FY 2015-16, and approximately two-thirds of detained immigrants at the San Francisco Immigration Court lack legal representation, so approximately 1,500 detained immigrants were unrepresented in FY 2015-16. The Public Defender's Office will establish criteria to determine which cases it will take, and estimates representation by the Public Defender's Office for up to 600 detainee cases per year.<sup>5</sup>

## **DETAILS OF PROPOSED LEGISLATION**

### **File 16-1288: Supplemental Appropriation Ordinance**

The proposed ordinance would appropriate \$2,241,797 of General Reserve to the Public Defender's Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18, as shown in Table 1 below. The appropriation amount for:

<sup>4</sup> Impact litigation cases are typically class action lawsuits or individual claims with broader significance intended to influence public policy.

<sup>5</sup> According to the Public Defender's Office, three community based organizations (Dolores Street Community Services, Pangea, and Asian Law Caucus, Asian Americans Advancing Justice) currently handle approximately 60 to 80 cases per year.



- FY 2016-17 of \$218,105 partially funds 13 positions with total salary and fringe benefits of \$418,105. The balance of \$200,000 is funded from salary savings in the Public Defender's FY 2016-17 budget; and
- FY 2017-18 funds 15 positions with salary and fringe benefits of \$2,023,692.

**Table 1: Sources and Uses of Funds**

Source of Funds	FY 2016-17	FY 2017-18	Total
General Reserve (File 16-1288)	\$218,105	\$2,023,692	\$2,241,797
<b>Uses of Funds</b>			
Salaries and Fringe Benefits	\$218,105	\$2,023,692	\$2,241,797

**File 16-1289: Annual Salary Ordinance Amendment**

The proposed ordinance would amend the Annual Salary Ordinance to add 13 new positions in the Public Defender's Office, equal to 3.25 full-time equivalent (FTE) positions in FY 2016-17 and 15 new positions in FY 2017-18 equal to 15.00 FTE positions, as shown in Table 2 below.

**Table 2: Proposed New Positions in the Public Defender's Office**

	Number of Positions	FY 2016-17 FTEs	Number of Positions	FY 2017-18 FTEs
8182 Head Attorney	1	0.25	1	1.00
8177 Attorneys	6	1.5	8	8.00
8173 Legal Assistant	4	1.0	4	4.00
8108 Senior Legal Process Clerk	2	0.5	2	2.00
<b>Total</b>	<b>13</b>	<b>3.25</b>	<b>15</b>	<b>15.00</b>

**FISCAL IMPACT****New Positions in the Public Defender's Office**

The supplemental appropriation ordinance appropriates \$2,241,797 to create 13 new positions in the Public Defender's Office in FY 2016-17, increasing to 15 positions in FY 2017-18, as shown in Table 2 above.

Timeline to Hire New Positions

Since the Public Defender's Office cannot begin the hiring process until the requested appropriation is approved by the Board of Supervisors, and approval would occur on March 14, 2017, at the earliest, the Budget and Legislative Analyst assumes that all new hires will start on May 1, 2017 rather than April 1, 2017, as provided in the proposed ordinance.

The 8177 Attorney and 8182 Head Attorney positions are at-will positions exempt from the civil service hiring process. In the past, the Public Defender's Office has reported that the department can fill vacant attorney positions within about one month. The 8173 Legal Assistant (paralegal) and 8108 Senior Legal Process Clerk positions are civil service positions. According to

Ms. Auyong, the Public Defender's Office intends to use an existing eligible list to expedite the process of filling those positions.

#### Immigrant Defense Caseload

As noted above, the Public Defender's Office estimates immigrant defense caseload of 400 to 600 cases per year. The proposed ordinance would fund:

- 13 positions in FY 2016-17 (based on an annual caseload of 400); and
- 15 positions in FY 2017-18 (based on an annual caseload of 500).

As noted above, the Budget and Legislative Analyst estimates that the Public Defender's Office will not be able to hire new positions in FY 2016-17 prior to May 1, 2017, and not on April 1, 2017 as budgeted. Therefore, the Budget and Legislative Analyst recommends reducing the number of FTEs in FY 2016-17 from 3.25 to 2.17, as shown in Table 3 below.

**Table 3: Proposed Reduction in FTEs in FY 2016-17**

	FY 2016-17		
	Annual Positions	File 16-1289	Proposed (2 months)
8182 Head Attorney	1.00	0.25	0.17
8177 Attorney	6.00	1.50	1.00
8173 Legal Assistant	4.00	1.00	0.67
8108 Senior Legal Process Clerk	2.00	0.50	0.33
<b>Total FTEs</b>	<b>13.00</b>	<b>3.25</b>	<b>2.17</b>

The Budget and Legislative Analyst's recommendation would result in a reduction in the requested appropriation of \$139,386, as shown in Table 4 below, from \$2,241,797 to \$2,102,429.

**Table 4: Budget and Legislative Analyst's Recommendation**

	FY 2016-17				
	FTE	Total	FTE	Total	Savings
8182 Head Attorney	0.25	\$54,487	0.17	\$36,324	
8177 Attorney	1.50	219,246	1.00	146,164	
8173 Legal Assistant	1.00	103,385	0.67	68,923	
8108 Senior Legal Process Clerk	0.50	40,988	0.33	27,325	
<b>Total</b>	<b>3.25</b>	<b>\$418,105</b>	<b>2.17</b>	<b>\$278,737</b>	
Salary Savings in FY 2016-17		(200,000)		(200,000)	
<b>Total</b>		<b>218,105</b>		<b>78,737</b>	<b>\$139,368</b>

Because the actual number of cases for detained immigrants to be handled by the Public Defender's Office is not known, the Budget and Legislative Analyst recommends placing FY 2017-18 salaries and fringe benefits of \$301,098 for the two additional 8177 Attorney positions to be added in FY 2017-18 on Budget and Finance Committee reserve pending submission of detailed caseload information by the Public Defender. Additionally, because the ongoing need

for the new legal unit to represent detained immigrants in deportation proceedings is not known, the Budget and Legislative Analyst recommends approving seven of the 15 new positions (four attorneys, two legal assistants, and one senior legal process clerk) as limited tenure for three years.

### **POLICY CONSIDERATION**

Administrative Code Section 10.60(b) provides for a General Reserve of 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, prepared jointly by the Mayor's Office, Controller's Office, and Budget and Legislative Analyst Office in December 2016, projected deposits to the General Reserve are \$14.6 million in FY 2017-18.

The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and the proposed ordinance would appropriate \$2.1 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.6 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.6 million, from \$14.6 million to \$18.2 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.6 million in FY 2017-18.

### **RECOMMENDATIONS**

1. Amend File 16-1288 to reduce the appropriation by (a) \$139,368 from \$2,241,797 to \$2,102,429 (see Table 4 above); and (b) place FY 2017-18 salaries and fringe benefits of \$301,098 on Budget and Finance Committee reserve pending submission of detailed caseload information by the Public Defender.
2. Amend File 16-1289 to (a) reduce the FY 2016-17 FTE from 3.25 FTE to 2.17 FTE (see Tables 3 and 4 above); and (b) designating seven of the 15 new positions (four 8177 Attorneys, two 8173 Legal Assistants, and one 8108 Senior Legal Process Clerk) as limited tenure for three years.
3. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.