

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
Todd Rufo, Director, Office of Economic and Workforce Development

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: November 3, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Kim on October 27, 2015:

File No. 151108

Resolution approving an agreement with the nonprofit Owners' Association for administration/management of the established property-based Community Benefit District known as the "Yerba Buena Community Benefit District," pursuant to California Streets and Highways Code, Section 36651, for a period commencing upon Board approval, through June 30, 2030.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Todd Rydstrom, Office of the Controller
Ken Rich, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

1 [Agreement - Owners' Association for Administration/Management of Yerba Buena
2 Community Benefit District]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration/management of the established property-based Community Benefit**
5 **District known as the "Yerba Buena Community Benefit District," pursuant to California**
6 **Streets and Highways Code, Section 36651, for a period commencing upon Board**
7 **approval, through June 30, 2030.**

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9 WHEREAS, On June 2, 2015, acting pursuant to California Constitution, Article XIID,
10 California Government Code, Section 53753, and the Property and Business Improvement
11 District Law of 1994 (California Streets and Highways Code, Division 18, Part 7, commencing
12 with Section 36600), as augmented by San Francisco Business and Tax Regulations Code,
13 Article 15, the Board of Supervisors adopted Resolution No. 197-15 ("Resolution of Intention")
14 declaring the Board's intention to renew and expand the property-based special assessment
15 district to be known as the Yerba Buena Community Benefit District; and declaring the Board's
16 intention to levy assessments on parcels to be included within the district, setting the public
17 hearing, initiating mail ballot majority protest proceedings, approving the management district
18 plan entitled "The Yerba Buena Community Benefit District Management Plan" (the
19 "Management District Plan" or "Plan"), making various findings, and taking other legislative
20 actions required to renew and expand the proposed district and levy the proposed
21 assessments (Board File No. 150499); and

22 WHEREAS, On July 31, 2015, acting pursuant to the aforementioned legal authorities,
23 the Board of Supervisors adopted Resolution No. 300-15 ("Resolution to Establish," Board
24 File No. 150762), establishing the property-based Community Benefit District designated as
25 the "Yerba Buena Community Benefit District" and levying multi-year special assessments on

1 Identified Parcels (as defined in Government Code, Section 53750(g)) included within the
2 District (the "Assessments"); and the Controller's designation for the Assessments for the
3 Yerba Buena Community Benefit District is Special Assessment No. 96; and

4 WHEREAS, Pursuant to the aforementioned legal authorities and the Resolution to
5 Establish, the Assessments may only be used to fund property-related services,
6 "Improvements" (as defined in Streets and Highways Code, Section 36610) and "Activities"
7 (as defined in Streets and Highways Code, Section 36606) within the District in accordance
8 with the Management District Plan (collectively, such authorized services, improvements and
9 activities are referred to here as "District Programs"); and

10 WHEREAS, The District is not a governmental, corporate or separate legal entity, but is
11 a geographic area containing all of the Identified Parcels subject to the Assessments for
12 District Programs described in the Plan and included in the annual budgets submitted to and
13 approved by the Board of Supervisors; the annual budget for District Programs for the first
14 year of operations is set forth in the Plan, and for subsequent years, shall be set forth in the
15 Annual Reports submitted to the Board of Supervisors as required by Streets and Highways
16 Code, Section 36650; and

17 WHEREAS, Pursuant to the Resolution to Establish and Streets and Highways Code,
18 Sections 36612 and 36650, the Board of Supervisors may contract with a private nonprofit
19 entity referred to as an "Owners' Association" to administer the District Programs; and

20 WHEREAS, An Owners' Association may be an existing nonprofit entity or a newly
21 formed nonprofit entity; and

22 WHEREAS, An Owners' Association is a private entity and may not be considered a
23 public entity for any purpose, nor may its board members or staff be considered to be public
24 officials for any purpose; provided, however, that an Owner's Association must comply with
25 the Ralph M. Brown Act (Government Code, Title 5, Division 2, Part 1, Chapter 9,

1 commencing with Section 54950) at all times when its board of directors or any committee
2 thereof hears, considers or deliberates on matters concerning the District, and must comply
3 with the California Public Records Act (Government Code, Title 1, Division 7, Chapter 3.5,
4 commencing with Section 6250), for purposes of providing public access to records relating to
5 the District; and

6 WHEREAS, An Owners' Association is obligated to hold in trust all funds it receives
7 from the City that are derived from the City's levy and collection of the Assessments, and to
8 use such funds exclusively for the purposes of implementing the Management District Plan
9 and administering, managing and providing District Programs set forth in the Plan, Resolution
10 to Establish, and annual budgets submitted by the Owners' Association and approved by the
11 Board of Supervisors; and

12 WHEREAS, Pursuant to the Resolution to Establish, the Office of Economic and
13 Workforce Development is the City agency responsible for coordination between the City and
14 the Owners' Association for the District; and

15 WHEREAS, The Office of Economic and Workforce Development has negotiated an
16 agreement with the California nonprofit corporation Yerba Buena Community Benefit District
17 to, in good faith and with diligence as the Owners' Association for the District, develop,
18 implement, direct, manage, administer, operate and ensure the timely provision of the District
19 Programs ("Management Agreement" or "Agreement"); and

20 WHEREAS, The Management Agreement is on file with the Clerk of the Board of
21 Supervisors in File No. 151108, which is hereby declared to be a part of this Resolution as if
22 set forth fully herein; and

23 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
24 the Resolution to Establish and the express terms of the Management Agreement, the
25

1 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
2 Resolution; and

3 WHEREAS, It is in the best interest of the City and the property owners within the
4 District for the City to enter into the Management Agreement with the Yerba Buena
5 Community Benefit District, Inc., according to the terms and conditions set forth therein; and

6 WHEREAS, The Planning Department has determined that the actions contemplated in
7 this Resolution comply with the California Environmental Quality Act (California Public
8 Resources Code Sections 21000 et seq.); and

9 WHEREAS, Said determination is on file with the Clerk of the Board of Supervisors in
10 File No. 151108 and is incorporated herein by reference; now, therefore, be it

11 RESOLVED, That the Board of Supervisors declares as follows:

12 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Office of Economic
13 and Workforce Development is duly authorized to execute the Management Agreement on
14 behalf of the City and County of San Francisco.

15 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
16 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
17 File No. 151108, which is hereby declared to be a part of this Resolution as if set forth fully
18 herein.

19 Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
20 The Office of Economic and Workforce Development, Controller and all other Departments,
21 City Officers and Employees are authorized to take all actions, make determinations, exercise
22 discretion, grant or deny approval, and otherwise take all reasonable steps necessary for full
23 performance of the Management Agreement on behalf of the City and County of San
24 Francisco according to its terms.

1 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
2 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
3 Board, the Office of Economic and Workforce Development may execute amendments to the
4 Agreement on behalf of the City and County of San Francisco that are consistent with the
5 Management District Plan, Resolution to Establish, official City policies and applicable law.
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