

BOARD of SUPERVISORS



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October 28, 2020

File No. 200961

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue
San Francisco, CA 94103

Dear Ms. Gibson:

On October 20, 2020, Supervisor Peskin introduced the following legislation:

File No. 200961

Resolution to establish (renew and expand) the business-based business improvement district known as the "Fisherman's Wharf Portside Community Benefit District," ordering the levy and collection of assessments against businesses located in that district for 15 years commencing with FY2020-2021, subject to conditions as specified; and making environmental findings.

This legislation is being transmitted to you for environmental review.

The resolution is scheduled for hearing at Board, sitting as a Committee of the Whole on November 17, 2020.

Angela Calvillo, Clerk of the Board

By: John Carroll, Assistant Clerk
Government Audit and Oversight Committee

Attachment

c: Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planner
Don Lewis, Environmental Planner

1 [Resolution to Establish (Renew and Expand) - Fisherman's Wharf Portside Community
Benefit District]

2

3 **Resolution to establish (renew and expand) the business-based business improvement**
4 **district known as the "Fisherman's Wharf Portside Community Benefit District,"**
5 **ordering the levy and collection of assessments against businesses located in that**
6 **district for 15 years commencing with Fiscal Year 2020-2021, subject to conditions as**
7 **specified; and making environmental findings.**

8

9 WHEREAS, Pursuant to the Property and Business Improvement Law of 1994,
10 California Streets and Highways Code Sections 36600 et seq. ("1994 Act"), as augmented by
11 Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), collectively,
12 the "Business Assessment Law," the Board of Supervisors adopted Resolution No. 403-20,
13 entitled "Resolution declaring the intention of the Board of Supervisors to renew and expand a
14 business-based business improvement district known as the 'Fisherman's Wharf Portside
15 Community Benefit District' and levy a multi-year assessment on all parcels in the district;
16 approving the management district plan and engineer's report and proposed boundaries map
17 for the district; ordering and setting a time and place for a public hearing of the Board of
18 Supervisors, sitting as a Committee of the Whole, on November 17, 2020, at 3:00 p.m.;

19 approving the form of the Notice of Public Hearing and Assessment Ballot Proceeding, and
20 Assessment Ballot; directing environmental findings; and directing the Clerk of the
21 Board of Supervisors to give notice of the public hearing and balloting, as required by law."
22 (the "Resolution of Intention," Board of Supervisors File No. 200959); and

23 WHEREAS, The Resolution of Intention to renew and expand the Fisherman's Wharf
24 Portside Community Benefit District (the "Fisherman's Wharf Portside CBD," "Portside CBD,"
25 or "District"), among other things, approved the Fisherman's Wharf Portside CBD

1 Management District Plan (the "District Management Plan"), a Boundaries Map, and the form
2 of the Notice of Public Hearing and Assessment Ballot Proceeding, that are all on file with
3 Clerk of the Board of Supervisors in File No. 200959; and

4 WHEREAS, The Board of Supervisors caused notice of a public hearing concerning
5 the proposed formation (renewal and expansion) of the Fisherman's Wharf Portside CBD, and
6 the proposed levy of assessments against businesses located within the District for a period
7 of 15 years, from fiscal years ("FYs") 2020-2021 through 2034-2035; and

8 WHEREAS, The Board of Supervisors has caused ballots to be mailed to the record
9 business registration certificate (business license) holder for business proposed to be
10 assessed within the District, as required by law; and,

11 WHEREAS, A District Management Plan dated February 2020 was filed with the Board
12 on August 18, 2020, containing information about the proposed district and assessments as
13 required by California Streets and Highways Code, Section 36622; and

14 WHEREAS, A Proposed Boundaries Map was submitted to the Clerk of the Board of
15 Supervisors pursuant to California Streets and Highways Code, Section 3110, on August 18,
16 2020; and

17 WHEREAS, A public hearing concerning the proposed formation (renewal and
18 expansion) of the Fisherman's Wharf Portside CBD and the proposed levy of assessments
19 within such District was held pursuant to the notice on November 17, 2020, at 3:00 p.m., the
20 Board met remotely through videoconferencing and the meeting was broadcast live; and

21 WHEREAS, At the public hearing, the testimony of all interested persons for or against
22 the proposed formation (renewal and expansion) of the District, the levy of assessments on
23 businesses within the District, the extent of the District, and the furnishing of specified types of
24 improvements, services and activities within the District, was heard and considered, and a full,
25 fair and complete meeting and hearing was held; and

1 WHEREAS, The Board of Supervisors heard and considered all objections or protests
2 to the proposed assessments and the Director of the Department of Elections tabulated the
3 assessment ballots submitted and not withdrawn, in support of or in opposition to the
4 proposed assessments, and the Clerk of the Board determined that a majority of the ballots
5 cast (weighted according to the proportional financial obligations of the business) by the
6 record business registration certificate (business license) holders of the businesses located
7 within the proposed District did not oppose establishing the proposed District; and

8 WHEREAS, The public interest, convenience and necessity require the renewal and
9 expansion of the proposed (renewed and expanded) Fisherman’s Wharf Portside Community
10 Benefit District; and

11 WHEREAS, In the opinion of the Board of Supervisors, the businesses within the
12 District will be specially benefited by the improvements, services and activities funded by the
13 assessments; and no assessment has been imposed on any business which exceeds the
14 reasonable cost of the proportional special benefit conferred on that parcel; now, therefore be
15 it

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

17 **Section 1. MANAGEMENT DISTRICT PLAN, AND BOUNDARIES MAP.** The
18 Board hereby approves the February 2020 Management District Plan, including the estimates
19 of the costs of the business-related services, activities and improvements set forth in the plan,
20 and the assessment of said costs on the businesses that will specially benefit from such
21 services, activities and improvements. The Board also hereby approves the Boundaries,
22 showing the exterior boundaries of the District, and ratifies and approves the Assessment
23 Ballot and the City’s use of such ballot, which Assessment Ballot is on file with the Clerk of the
24 Board of Supervisors in File No. 200959 and is hereby declared to be a part of the Resolution
25 as if set forth fully herein. A copy of the February 2020 Amended Management District Plan

1 and the Boundaries Map are on file with the Clerk of the Board of Supervisors in File No.
2 _____, which is hereby declared to be a part of this Resolution as if set forth fully
3 herein.

4 **Section 2. FINDING OF NO MAJORITY PROTEST.** The Board of Supervisors
5 hereby finds that a majority protest does not exist as defined in Section 4(e) of Article XIID of
6 the California Constitution and Section 53753 of the California Government Code with respect
7 to the renewal and expansion of the Fisherman's Wharf Portside Community Benefit District.
8 All objections or protests both written and oral, are hereby duly overruled.

9 **Section 3. ESTABLISHMENT OF DISTRICT.** Pursuant to the 1994 Act and Article
10 15, the renewed and expanded business-based business improvement district designated as
11 the "Fisherman's Wharf Portside Community Benefit District" is hereby established.

12 **Section 4. DESCRIPTION OF DISTRICT.** The exterior boundaries of the
13 Fisherman's Wharf Portside Community Benefit District are as set forth in the map contained
14 in the Management District Plan on file with the Clerk of the Board of Supervisors in File No.
15 200959, and incorporated herein by reference. The exterior boundaries of the District is as
16 follows and includes all businesses on both sides of the street unless otherwise noted:

17 The Portside CBD will be located in the historic Fisherman's Wharf neighborhood of the
18 City of San Francisco. The Portside CBD will generally be bounded by the
19 Embarcadero to the North (extending to the waterfront), Jefferson Street to the South,
20 Pier 35 and the Embarcadero to the East (extending to the waterfront), and Hyde
21 Street to the West. The Portside CBD will include restaurants, food and beverage
22 businesses, retail businesses, for-profit parking lots, non-profit entities, and various tour
23 or charter operators, existing and in the future, within and around the boundaries
24 described above. There are 45 businesses to be assessed within the Portside CBD.
25 Reference should be made to the detailed map and the list of businesses identified by

1 Operating Number and Facility Name in the Management District Plan Appendices, in
2 order to determine which businesses are included in the District.

3 Reference should be made to the detailed maps and the lists of businesses identified
4 by Operating Number and Facility Name that are contained in the February 2020
5 Management District Plan, in order to determine which businesses are included in the
6 Fisherman’s Wharf Portside Community Benefit District.

7 **Section 5. FINDING OF BENEFIT.** The Board of Supervisors hereby finds that the
8 businesses within the District will be benefited by the improvements and activities funded by
9 the assessments proposed to be levied.

10 **Section 6. SYSTEM OF ASSESSMENTS.** (a) Annual assessments will be levied to
11 pay for the activities to be provided within the District, commencing with FY2020-2021, and
12 continuing for 15 years, ending with FY2034-2035. For purposes of levying and collecting
13 assessments within the District, a fiscal year shall commence on each July 1st and end on the
14 following June 30th.

15 (b) The amount of the proposed assessments to be levied and collected for fiscal
16 year 2020-2021 shall be a maximum of \$275,000.00 (as shown in the Management District
17 Plan February 2020). The amount of assessments to be levied and collected in fiscal years
18 two through 15 may be increased annually by the Fisherman’s Wharf Portside Community
19 Benefit District corporation Board of Directors by an amount not to exceed the change in the
20 Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose
21 Consolidated Metropolitan Statistical Area, or five percent (5%), whichever is greater. For
22 businesses whose annual assessments are calculated based on a gross sales assessment
23 formula, year two through fifteen assessments may increase or decrease annually according
24 to their reported gross sales.

1 (c) The method and basis of levying and collecting the assessment shall be as set
2 forth in the Management District Plan. The levy of the assessments shall commence with
3 fiscal year 2020-2021. Each year the assessment shall be due and payable. The
4 assessments shall be collected through special annual billing sent by the City's Treasurer/Tax
5 Collector by May 1st of each year to each holder of a City business registration certificate
6 (business license) in the District. District businesses will have until the last day of June each
7 year to pay their annual assessments.

8 **Section 7. USE OF REVENUES.** The proposed business-related services,
9 improvements and activities for the District include:

10 **Clean and Safe Program:** Clean and Safe Program includes, but is not limited to,
11 sidewalk cleaning, sidewalk pressure washing, trash collection, graffiti removal and abatement,
12 security patrol, and emergency preparedness.

13 **Contingency/Reserve Allocation:** Contingency and Reserves fund a contingency
14 reserve that may be used to cover possible unforeseen future expenses and help to smooth
15 out cash flows, which are affected by the timing of the assessment payments.

16 **Administration:** Administration includes daily oversight and operation of the
17 Fisherman's Wharf Portside CBD, adherence to the Management District Plan, and
18 compliance with audit/reporting requirements. Also included are office expenses, professional
19 services, organization expenses, and other similar services.

20 **Contingency and Reserves:** Contingency and Reserves fund a contingency reserve
21 that may be used to cover possible unforeseen future expenses and help to smooth out cash
22 flows, which are affected by the timing of business payments.

23 **Section 8. AUTHORITY TO CONTRACT.** The Board of Supervisors may contract
24 with a separate private entity to administer the improvements, services and activities set forth
25 in Section 7, as provided in California Streets and Highways Code Sections 36612 and 36650.

1 Any such entity shall hold the funds it receives from the City and County of San Francisco
2 ("City") in trust for the improvements, services and activities set forth in Section 7. Any such
3 entity that holds funds in trust for purposes related to the contract shall deliver, at no expense
4 to the City, a balance sheet and the related statement of income and cash flows for each
5 fiscal year, all in reasonable detail acceptable to City, reviewed by a Certified Public
6 Accountant (CPA); this review shall include a statement of negative assurance from the CPA.
7 In addition, or alternatively, the Controller in his or her discretion or the Office of Economic
8 and Workforce Development in its discretion, may require the private entity to deliver, at no
9 expense to the City, an annual independent audit report by a Certified Public Accountant of all
10 such funds. The CPA review and/or audit may be funded from assessment proceeds as part
11 of the general administration of the District. At all times the Board of Supervisors shall
12 reserve full rights of accounting of these funds. The Office of Economic and Workforce
13 Development shall be the City agency responsible for coordination between the City and the
14 District.

15 **Section 9. AMENDMENTS.** The businesses in the District established by this
16 Resolution shall be subject to any amendments to the 1994 Act, and City Business and Tax
17 Regulations Code Article 6 and Article 15.

18 **Section 10. RECORDATION OF NOTICE AND DIAGRAM.** The County Clerk is
19 hereby authorized and directed to record a notice and an assessment diagram pursuant to
20 Section 36627 of the California Streets and Highways Code, following adoption of this
21 Resolution.

22 **Section 11. LEVY OF ASSESSMENT.** The adoption of this Resolution and
23 recordation of the notice and assessment diagram pursuant to Section 36627 of the California
24 Streets and Highways Code constitutes the levy of an assessment in each of the fiscal years
25 referred to in the Management District Plan. The assessments shall be collected through a

1 special annual billing sent by the City's Treasurer/Tax Collector by May 1st of each year to
2 each holder of a City business registration certificate (business license) in the District. District
3 businesses will have until the last day of June each year to pay their annual assessments

4 **Section 12. BASELINE SERVICES.** To ensure that assessment revenues from the
5 District are used to enhance the current level of services provided by the City within the
6 District, the establishment of the District will not affect the City's policy to continue to provide
7 the same level of service to the areas encompassed by the District as it provides to other
8 similar areas of the City for the duration of the District, provided, however, that in the event of
9 a significant downturn in citywide revenues, the Board of Supervisors may reduce the level of
10 municipal services citywide, including within the District.

11 **Section 13. ENVIRONMENTAL FINDINGS.** The Planning Department has
12 determined that the actions contemplated in this Resolution are in compliance with the
13 California Environmental Quality Act (California Public Resources Code sections 21000
14 *et seq.*). Said determination is on file with the Clerk of the Board of Supervisors in File
15 No. _____, which is hereby declared to be a part of this Resolution as if set forth
16 fully herein.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

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

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

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

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

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