

BOARD of SUPERVISORS



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May 24, 2017

File No. 170484

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Gibson:

On April 25, 2017, the Supervisor Mark Farrell introduced the following legislation:

File No. 170484

Resolution authorizing the inclusion of the Figtree Property-Assessed Clean Energy ("PACE") Program in the City and County of San Francisco's Renewable PACE Program through the California Enterprise Development Authority; and authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City and County of San Francisco; and authorizing related actions, as defined herein.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board


By: Linda Wong, Assistant Clerk

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

1 [Authorizing Inclusion of Figtree Property-Assessed Clean Energy ("PACE") Program in
2 California Enterprise Development Renewable PACE Programs]

3 **Resolution authorizing the inclusion of the Figtree Property-Assessed Clean Energy**
4 **("PACE") Program in the City and County of San Francisco's Renewable PACE**
5 **Program through the California Enterprise Development Authority; and authorizing the**
6 **California Enterprise Development Authority to conduct contractual assessment**
7 **proceedings and levy contractual assessments within the territory of the City and**
8 **County of San Francisco; and authorizing related actions, as defined herein.**

9
10 WHEREAS, The California Enterprise Development Authority is a joint exercise of
11 powers authority ("CEDA"), authorized and existing pursuant to Joint Powers Act
12 (Government Code Section 6500 *et seq.*) and that certain Joint Exercise of Powers
13 Agreement, dated as of June 1, 2006, of which the City and County of San Francisco ("City")
14 is an Associate Member, has adopted the Figtree Property Assessed Clean Energy (PACE)
15 and Job Creation Program ("Program" or "Figtree PACE"), to allow the financing of certain
16 renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure,
17 and water efficiency improvements ("Improvements") through the levy of contractual
18 assessments pursuant to Chapter 29 of Division 7 of the Streets and Highways Code
19 ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness
20 ("Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections
21 8500 *et seq.*) ("1915 Act") upon the security of the unpaid contractual assessments; and

22 WHEREAS, Chapter 29 provides that assessments may be levied under its provisions
23 only with the free and willing consent of the owner of each lot or parcel on which an
24 assessment is levied at the time the assessment is levied; and
25

1 WHEREAS, The City desires to allow the owners of property ("Participating Parcel")
2 within its territory ("Participating Property Owners") to participate in Figtree PACE and to allow
3 CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the
4 1915 Act to finance or refinance the Improvements; and

5 WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 to establish
6 an assessment district ("District") and issue Bonds under the 1915 Act to finance
7 Improvements; and

8 WHEREAS, There has been presented to this Board a proposed form of Resolution of
9 Intention to be adopted by CEDA in connection with such assessment proceedings ("ROI"), a
10 copy of which is attached hereto as Exhibit A; and

11 WHEREAS, The ROI sets forth the territory within which assessments may be levied
12 for Figtree PACE which territory shall be coterminous with the County's official boundaries of
13 record at the time of adoption of the ROI ("Boundaries"); provided however, that a City
14 property owner may enter into contractual assessments with CEDA only after this Board has
15 adopted a resolution to authorize participation in the Program; and

16 WHEREAS, Pursuant to Chapter 29, the City authorizes CEDA to conduct assessment
17 proceedings, levy assessments, pursue remedies in the event of delinquencies, and issue
18 bonds or other forms of indebtedness to finance the Improvements in connection with Figtree
19 PACE; and

20 WHEREAS, To protect the City and its officers and employees in connection with
21 operation of the Figtree PACE program, Figtree Energy Financing, the program administrator,
22 has agreed to defend and indemnify the City for disputes arising from Figtree Energy
23 Financing's admiration of its program; and

24 WHEREAS, The City will not be responsible for the conduct of any assessment
25 proceedings, the levy of assessments, or any required remedial action in the case of

1 delinquencies, the issuance, sale or administration of the bonds or other indebtedness issued
2 in connection with Figtree PACE, now therefore, be it

3 RESOLVED, That Board finds and declares that the foregoing recitals are true and
4 correct; and, be it

5 FURTHER RESOLVED, That City hereby appoints CEDA as its representative to (i)
6 record the assessment against the Participating Parcels, (ii) administer the District in
7 accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the
8 California Streets and Highways Code (commencing with Section 8500 *et seq.*) ("Law"), (iii)
9 prepare or cause to be prepared program guidelines for the operations of the Program, and
10 (iv) as required, proceed with any claims, proceedings or legal actions as shall be necessary
11 to collect past due assessments on the properties within the District in accordance with the
12 Law and Government Code Section 6509.6 of the California Government Code; provided
13 however, nothing herein shall cause the City to be deemed to be an agent of Figtree or CEDA
14 as a result of the adoption of this Resolution; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors hereby finds and determines
16 that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will
17 provide significant public benefits, including without limitation, savings in effective interest
18 rates, bond preparation, bond underwriting and bond issuance costs and reductions in
19 effective user charges levied by water and electricity providers within the boundaries of the
20 County; and, be it

21 FURTHER RESOLVED, That in connection with Figtree PACE, the City hereby
22 consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any
23 Property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:
24 (1) Such proceedings are conducted by CEDA pursuant to one or more Resolutions of
25 Intention in substantially the form of the ROI;

1 (2) The Participating Property Owners, who shall be the legal owners of such property,
2 voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable
3 provisions of California law in order to accomplish the valid levy of assessments; and

4 (3) The City shall not be responsible for the conduct of any assessment proceedings, the
5 levy of assessments, any required remedial action in the case of delinquencies in such
6 assessment payments, or the issuance, sale or administration of the Bonds in connection with
7 Figtree PACE; and, be it

8 FURTHER RESOLVED, That pursuant to the requirements of Chapter 29, CEDA has
9 prepared and will update from time to time the "Program Report" for Figtree PACE ("Program
10 Report," a copy of which is on file with the Clerk of the Board of Supervisors in File
11 No. _____) and associated documents, and CEDA will undertake assessment proceedings
12 and the financing of Improvements as set forth in the Program Report; and, be it

13 FURTHER RESOLVED, That this Board hereby acknowledges that the Law permits
14 foreclosure in the event that there is a default in the payment of assessments due on a
15 property, and the Board hereby designates CEDA as its representative to proceed with
16 collection and foreclosure of the liens on the defaulting properties within the District, including
17 accelerated foreclosure pursuant to the Program Report; and, be it

18 FURTHER RESOLVED, That the Controller, the Executive Director of the Department
19 of the Environment, the Director of the Office of Public Finance and their respective designees
20 are hereby authorized and directed to make applications for Figtree PACE available to all
21 property owners who wish to finance Improvements; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby finds that adoption of
23 this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"),
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25

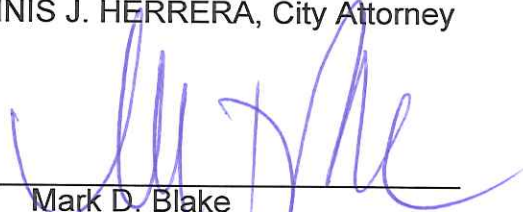
1 because the Resolution does not involve any commitment to a specific project which may
2 result in a potentially significant physical impact on the environment, as contemplated by Title
3 14, California Code of Regulations, Section 15378(b)(4)); and, be it

4 FURTHER RESOLVED, The costs associated with the formation and administration of
5 the assessment district will be provided by CEDA, and the City shall have no liability or
6 responsibility therefor; and, be it

7 FURTHER RESOLVED, That the Controller, the Director of the Environment, the
8 Director of the Office of Public Finance and their respective designees are hereby authorized
9 and directed to execute and deliver such certificates, requisitions, agreements (including any
10 indemnity agreement provided to the City by Figtree) and related documents as are
11 reasonably required by CEDA in accordance with the Program Report to implement Figtree
12 PACE for Participating Property Owners; and, be it

13 FURTHER RESOLVED, That this Resolution shall take effect immediately upon its
14 adoption.

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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

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19 By: 
20 Mark D. Blake
21 Deputy City Attorney
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