

AMENDED IN COMMITTEE  
12/09/2020

FILE NO. 201333

RESOLUTION NO.

1 [Issuance of Judgment Obligation Bonds - Not to Exceed \$995,000,000]

2

3 **Resolution authorizing the issuance of not to exceed \$995,000,000 aggregate principal**  
4 **amount of City and County of San Francisco Judgment Obligation Bonds to pay the**  
5 **costs of a potential judgment associated with litigation related to Proposition C (2018)**  
6 **(Commercial Rent Tax for Childcare and Early Education), subject to specified**  
7 **conditions, as defined herein.**

8

9 WHEREAS, The City is authorized pursuant to Articles 10 and 11 (commencing with  
10 Section 53570) of Chapter 3 of Division 2 of Title 5 of the California Government Code (“Act”)  
11 to issue refunding bonds for the purpose of refunding any evidence of indebtedness of the City;  
12 and

13 WHEREAS, On June 5, 2018, voters approved a measure entitled “Commercial Rent  
14 Tax for Childcare and Early Education” (“Proposition C”) to levy a tax in the amount of one-  
15 percent (1%) of gross receipts for warehouse space and three and one-half percent (3.5%) for  
16 other commercial properties to raise funds to pay for childcare and early childhood education  
17 (“Universal Childcare Program”); and

18 WHEREAS, It was estimated that Proposition C would raise \$146 million annually for  
19 the Universal Childcare Program, with 85 percent of funds designated for childcare and  
20 education among children from birth to five years old and 15 percent of funds available for  
21 general City purposes; and

22 WHEREAS, On August 3, 2018, the Howard Jarvis Taxpayers Association, the Building  
23 Owners and Managers Association of California, the California Business Properties  
24 Association, and the California Business Roundtable (collectively “Complainants”) filed a  
25 “reverse validation” action in San Francisco Superior Court seeking to invalidate Proposition

1 C, arguing that the special tax measure was not lawfully approved since it only received  
2 majority voter approval, and not the two-thirds voter approval required by the California  
3 Constitution; and

4 WHEREAS, The City argued the measure was lawfully adopted as a citizen initiative  
5 for which only majority approval is required, versus the two-thirds approval required if City  
6 lawmakers submitted the measure to the ballot; and

7 WHEREAS, The Superior Court ruled in favor of the City and held that Proposition C  
8 was approved by the requisite voter approval threshold since it was put on the ballot by citizen  
9 initiative, and on June 30, 2020, a panel of three California First District Court of Appeal  
10 judges upheld the Superior Court’s ruling holding that Proposition C was correctly approved  
11 by simple majority requirement rather than a two-thirds supermajority requirement; and

12 WHEREAS, The Controller, as a prudent budgetary measure, had placed Proposition  
13 C tax revenues on reserve; and

14 WHEREAS, On July 28, 2020, this Board of Supervisors passed a Charter Amendment  
15 initiative ordinance to place a measure on the November 3, 2020, ballot entitled “Proposition  
16 F, Business and Tax Regulation Charter Amendment” (“Proposition F”), that included, among  
17 other things, the imposition of contingent commercial and warehouse taxes if Proposition C is  
18 struck down; and

19 WHEREAS, Proposition F was approved by the voters on November 3, 2020, by 67  
20 percent of the voters, pending certification of the election by the City’s Department of  
21 Elections; and

22 WHEREAS, Given the court rulings in the City’s favor and the recent passage of  
23 Proposition F, the Controller has determined to release funds in the Proposition C reserve  
24 notwithstanding the fact that Complainants will seek review by the California Supreme Court;  
25 and

1           WHEREAS, For the purpose of refunding the City’s obligations evidenced by the  
2 Judgment, the City has determined to issue its Judgment Obligation Bonds, Series 2021  
3 (“Bonds”), in an aggregate principal amount not exceeding the sum of \$995,000,000, with such  
4 amount to be applied to (a) pay the Judgment Obligation (as defined below), including the  
5 reimbursement of the City for any advances or interfund borrowings made to pay such  
6 Judgment Obligation (as defined below) in anticipation of the issuance of the Bonds, (b) fund a  
7 debt service or other similar reserve and (c) pay the costs of issuance of the Bonds (including  
8 underwriter’s discount); and

9           WHEREAS, As a prudent budgetary measure, it is advisable nonetheless to authorize  
10 the issuance of Judgment Obligation Bonds in an amount not to exceed \$995,000,000 given  
11 the pendency of the Proposition C litigation before the California Supreme Court, and the  
12 potential adverse effect on the City’s budget if the City were to ultimately lose the Proposition  
13 C litigation (herein the “Judgment Obligation”); and

14           WHEREAS, The Board of Supervisors has determined to authorize the issuance of City  
15 and County of San Francisco Judgment Obligation Bonds, Series 2021 (or such other  
16 designation determined by the Controller), in an aggregate principal amount not exceeding the  
17 sum of \$995,000,000, with such amount to be applied to (a) pay the Judgment Obligation,  
18 including the reimbursement of the City for any advances or interfund borrowings made to pay  
19 such Judgment Obligation in anticipation of the issuance of the Bonds, (b) fund a debt service  
20 or other similar reserve and (c) pay the costs of issuance of the Bonds (including underwriter’s  
21 discount); and

22           WHEREAS, The issuance of the Bonds can be undertaken without a voter approval as  
23 an obligation imposed by law in accordance with long-standing California Supreme Court  
24 precedent *City of Long Beach v. Lisenby*, 180 Cal. 52 (1919) (holding that a tort judgment  
25 does not create a prohibited debt notwithstanding the liability would be paid from a

1 subsequent fiscal year), although the City may determine to validate the matter under  
2 California Civil Code Section 860 et seq.; and

3 WHEREAS, The Controller has agreed to provide the Board of Supervisors with a  
4 “good faith” estimate of bond financing costs required by California Government Code Section  
5 5852.2 prior to the issuance of the Bonds; and

6 WHEREAS, The City is authorized to cause the issuance of the Bonds pursuant to the  
7 Charter and other applicable provisions of the laws of the State of California; now, therefore  
8 be it resolved as follows:

9 Section 1. All of the recitals herein are true and correct.

10 Section 2. Approval and Authorization of Bonds. The Controller is hereby authorized  
11 and directed to cause the issuance of Bonds to (a) pay the Judgment Obligation, including the  
12 reimbursement of the City for any advances or interfund borrowings made to pay such  
13 Judgment Obligation in anticipation of the issuance of the Bonds, (b) fund a debt service or  
14 other similar reserve and (c) pay the costs of issuance of the Bonds (including underwriter’s  
15 discount); is hereby approved. The total principal amount of the Bonds shall not exceed  
16 \$995,000,000. The authorization to issue the Bonds is subject to the following conditions (i)  
17 the City shall have suffered an adverse ruling by the California Supreme Court with respect to  
18 the Proposition C litigation and the Controller shall have determined that the amount of  
19 exposure exceeds City budgetary resources; (ii) the Controller shall have returned to this  
20 Board with substantially final financing documents, including the form of Preliminary Official  
21 Statement and other financing documents, for its review and approval, as such documents  
22 shall have been reviewed by the City Attorney.

23 The Controller’s Director of Public Finance (“Director”) is hereby authorized to cause  
24 the sale of Bonds authorized under the terms of this resolution by negotiated sale pursuant to  
25 one or more purchase contracts as the Director may negotiate with such underwriter selected

1 by the Director pursuant to competitive process. In the event of a negotiated sale of any series  
2 of Bonds as provided hereunder, the underwriter's discount shall not exceed one percent  
3 (1.0%) of the par amount thereof.

4 Section 3. Validation Proceedings. Each of the Mayor, Controller, Director and other  
5 officers of the City, in consultation with the City Attorney, are hereby authorized, and any one  
6 of the Authorized Officers is hereby directed, for and in the name of the City, to bring a  
7 validation action under Section 860 of the California Code of Civil Procedure and this  
8 Resolution to determine the legality and validity of the Bonds, any security document related  
9 thereto and the proceedings authorized pursuant to this Resolution, and the City's bond  
10 counsel is hereby authorized to file the complaint for such validation action on behalf of the  
11 City, and to take further and appropriate actions in connection therewith.

12 Section 4. General Authority. The Mayor, Controller and the Director, and all other  
13 appropriate officers, employees, representatives and agents of the City are hereby authorized  
14 and directed to do everything necessary or desirable, in consultation with the City Attorney, to  
15 provide for the issuance of the Bonds in accordance with the terms of this Resolution. Any  
16 such actions are solely intended to further the purposes of this Resolution and are subject in  
17 all respects to the terms of this Resolution, including the conditions for the issuance of the  
18 Bonds as set forth in Section 2 above.

19 Section 5. This Resolution shall take effect immediately upon its adoption.  
20

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:  /s/ Mark D. Blake  
24 MARK D. BLAKE  
25 Deputy City Attorney

n:\financlas2020\0900487\01496828.docx