

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

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October 3, 2016

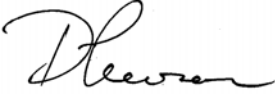
TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: October 6, 2016 Government Audit and Oversight Committee Meeting

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<p>Item: File: 16-0756 <i>(Continued from September 1, 2016)</i></p>	<p>Departments: Office of Community Investment and Infrastructure (OCII) City Administrator Real Estate Division</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would acknowledge the establishment of a new public benefit civic nonprofit entitled the Yerba Buena Gardens Conservancy, created specifically to assume long-term operating and management responsibility for Yerba Buena Gardens under a master lease with the City and County of San Francisco (City).

Key Points

- Yerba Buena Gardens, originally conceived as a former Redevelopment Project Area, was constructed with public funds and includes private uses, cultural and recreational facilities and public open spaces on three blocks adjacent to the Moscone Convention Center.
- The Office of Community Investment and Infrastructure (OCII) currently owns, maintains and manages Yerba Buena Gardens. Yerba Buena Gardens is anticipated to be transferred from OCII to the City for governmental purposes in 2017.

Fiscal Impact

- Yerba Buena Gardens is fully supported currently with annual rental income, primarily through ground leases and other agreements, for the ongoing operations, maintenance and security of the gardens and cultural facilities.
- Actual revenues in FY 2014-15 totaled \$13,295,040 and expenses totaled \$8,247,280, resulting in a surplus of \$5,047,760. However, over the next ten years, revenues are projected to decrease, ranging between \$9.6 million to \$11.6 million, with expenses increasing to between \$10.6 million and \$12.8 million.

Recommendations

- Approval of the proposed resolution is a policy decision for the Board of Supervisors.
- If the Board of Supervisors approves this resolution, amend the proposed resolution to
 - a. provide guidance to the newly formed nonprofit and the Real Estate Division regarding who will make the appointments, the appointment process and weighting of the Board of Directors positions; and
 - b. amend page 4, lines 11 through 17 to delete the current language and instead state that the Real Estate Division will lead the analysis and recommendations related to Yerba Buena Gardens’ long-range capital improvement funding needs and the potential revenues sources to address these needs with such information to be provided to the Board of Supervisors when the master lease is subject to approval in 2017.

MANDATE STATEMENT

City Charter Section 2.105 states that the Board of Supervisors shall act by written ordinance or resolution, after introduction by a member of the Board of Supervisors.

BACKGROUND

Yerba Buena Gardens, originally conceived as part of the former Yerba Buena Center Redevelopment Project Area, was constructed with public funds and includes private uses, cultural and recreational facilities and public open spaces on three blocks located above and adjacent to the Moscone Convention Center comprising:

- Block One: between Market, Mission, Third and Fourth Streets includes Jessie Square, the Marriott Hotel, Yerba Buena Lane and retail spaces along both sides of Yerba Buena Lane.
- Block Two: between Mission, Howard, Third and Fourth Streets includes the Esplanade, the Martin Luther King Jr. Memorial Fountain, East Garden, Yerba Buena Center for the Arts Gallery and Theater, the Metreon, two cafes and the Sister City Garden.
- Block Three: between Howard, Folsom, Third and Fourth Streets includes the Children's Creativity Museum, with its historic carousel, a children's garden and playground, the ice skating/bowling center and the SoMa Childcare Center.

A map on the following page shows Yerba Buena Gardens.

Changes in Ownership and Management of Yerba Buena Gardens

Yerba Buena Gardens was owned, developed, maintained and managed by the former San Francisco Redevelopment Agency, based on previous federal grants, bonds, land sales, leases and tax increment financing agreements. On January 1, 2011, the Yerba Buena Center Redevelopment Project Area expired, such that tax increment financing for Yerba Buena Gardens is no longer available. In early 2012, the State Legislature dissolved redevelopment agencies in California (AB 26 in 2011 and AB 1484 in 2012). The City's Office of Community Investment and Infrastructure (OCII), as the Successor Agency to the former San Francisco Redevelopment Agency, currently owns, maintains and manages Yerba Buena Gardens. OCII uses third party contractors to operate, manage and maintain the facilities and landscaping.

Under State Redevelopment Dissolution Law, OCII is required to dispose of all properties it owns or leases pursuant to a Long-Range Property Management Plan, approved by the California Department of Finance in December 2015. OCII and the City's Real Estate Division have worked closely with community stakeholders to develop the Property Management Plan for Yerba Buena Gardens. Under this Plan, ownership of Yerba Buena Gardens will be transferred from OCII to the City for governmental purposes as a single, unified set of properties. The Office of the City Administrator has agreed to accept Yerba Buena Gardens to be used for governmental purposes, along with the long-term restricted revenues and related enforceable obligations to continue operating, maintaining and managing Yerba Buena Gardens. This transfer is anticipated to occur in early 2017, subject to Board of Supervisors approval.



DETAILS OF PROPOSED LEGISLATION

The proposed resolution would acknowledge the establishment of a new public benefit civic nonprofit entitled the Yerba Buena Gardens Conservancy, created specifically to assume the long-term operating and management responsibility for Yerba Buena Gardens under a master lease with the City and County of San Francisco (City).

Yerba Buena Gardens Conservancy

In accordance with the proposed resolution, the nonprofit Yerba Buena Gardens Conservancy would be governed by a Board of Directors comprised of Yerba Buena Gardens stakeholders and community and civic leaders, up to half of which will be appointed by the City. The Yerba Buena Gardens Conservancy nonprofit was formed on May 3, 2016, with the stated mission of sustaining the integrity and interconnectedness of Yerba Buena Gardens. The Yerba Buena Gardens Conservancy is currently chaired by Ms. Cathy Maupin, existing Executive Director of the Yerba Buena Community Benefit District. The vice-chair is Mr. Sean Jeffries of Millennium Partners.

According to Mr. John Updike, Director of the Real Estate Division, although a draft term sheet for a master lease outlines some provisions for the Board of Directors for the Yerba Buena Gardens Conservancy, the number of Board of Director positions and the specific appointees for each position has not yet been determined. The newly created Yerba Buena Gardens Conservancy will be overseeing the long term operations and management of the City's Yerba Buena Gardens. As noted in the draft term sheet discussed on the following pages, the Yerba Buena Gardens Conservancy Board of Directors would have a maximum 21 members, with not less than 25% appointed by the City Administrator and not less than 20% appointed by the Mayor. The Budget and Legislative Analyst recommends that the Board of Supervisors provide guidance for negotiation purposes to the newly formed nonprofit and the Real Estate Division regarding who will make the appointments, the appointment process and weighting of the Board of Directors positions.

The proposed resolution specifies that the Yerba Buena Gardens Conservancy would be responsible for employing its own administrative staff and continuing to contract for maintenance, operations, security services and public event programming, subject to annual audit by the City. In addition, the Yerba Buena Gardens Conservancy would be required to comply with Brown Act provisions, the City's Sunshine Ordinance, Ethics Commission regulations, City contract bidding procedures and all City labor and human rights policies. The proposed resolution also states that the City would provide legal and technical support services to enforce the former Redevelopment Agency agreements. To provide such City services would require additional operating revenues from Yerba Buena Gardens to cover such costs.

Yerba Buena Capital Improvements

The proposed resolution states that the Yerba Buena Gardens' long-range capital improvement funding needs would be addressed by the City's Office of Economic and Workforce Development (OEWD) in the Community Facilities Funding Program as part of the City's

pending Central SoMa Area Plan, by December 31, 2016. However, according to Mr. Updike, the Real Estate Division will work directly with the City Administrator and the City's Capital Planning Program staff to better understand the Yerba Buena Gardens' long-range capital improvement needs and to propose options for covering these related capital costs. This information would be provided to the Board of Supervisors at the time the master lease is brought to the Board of Supervisors for approval in 2017. Therefore, this resolve clause should be amended to clarify that the Real Estate Division will lead the analysis and recommendations related to Yerba Buena Gardens' long-range capital improvement funding needs and the potential revenue sources to address these needs.

Annual Operating Support

The proposed resolution also states that the loss of annual operating support from the Moscone Convention Center would be replaced with City resources, to be identified by the City Administrator by December 31, 2016. Mr. Updike advises that the Moscone Convention Center annual operating support were annual lease payments that ended in 2015 when the City repaid the outstanding bonds, the lease was terminated, and that portion of the property was transferred to the City. Mr. Ken Bukowski, the Deputy City Administrator advises that the City Administrator's Office has not committed to replacing this income stream since the replacement of this income would require additional General Fund support.

Term Sheet for Master Lease

Mr. Updike advises that he is currently working with the Yerba Buena Gardens Conservancy on a draft master lease that would contain the following main provisions from an approved term sheet between the City as landlord and Yerba Buena Gardens Conservancy as tenant, to operate and manage Yerba Buena Gardens. Mr. Updike states that such a master lease with the Yerba Buena Gardens Conservancy would be requested as a sole source award, in the best interests of the City, given the Yerba Buena Gardens Conservancy stakeholder representation and relationship with the City. Such a master lease between the City and the Yerba Buena Gardens Conservancy would be subject to separate future Board of Supervisors approval.

- Term: 45 years, or through September 1, 2061.
- Rent: \$1 per year payable by Yerba Buena Gardens Conservancy to the City.
- Permitted Uses: charitable/civic and cultural purposes, with net income solely to operate, maintain and secure property (excluding capital improvements) in a first class condition, consistent with deed restrictions and enforceable obligations.
- Subleases: Permitted with City consent, consistent with master lease.
- Funding: City will transfer balance of Yerba Buena Gardens funds, including reserve accounts, to tenant, for operation, maintenance, capital and security. These funds have various restrictions based on previous contractual obligations and requirements. Tenant will receive funding, including base rent, participation rent, Garden, Maintenance, Operations and Security (GMOS) and/or developer extractions from Marriott Hotel, Millennium/Four Season, Metreon, St. Regis, Samovar Tea Lounge, B Restaurant, other

operating leases (ice rink, bowling) and 706 Mission, when built. Tenant may obtain financing and indebtedness with these funds to repay.

- **City Responsibilities:** City responsible at its sole cost for all substructure costs including maintenance, operations, repairs, upgrades or expansion. City responsible for maintenance and repair of all utilities. City will undertake to secure funding for capital improvements to maintain substructure in first class condition.
- **Public Financing Authority (PFA):** City will consider establishing a PFA and Enhanced Infrastructure Financing District to fund construction and rehabilitation of public facilities.
- **Tenant Organization:** Not-for-profit California Corporation with Board of Directors of a maximum 21 members. Executive Director and appropriate support staff. No less than 25% of Board of Directors appointed by the City Administrator and no less than 20% appointed by the Mayor, and at least one of these appointees must serve on the Executive Committee of the Board of Directors. By-laws of the corporation will guide selection of remaining Board of Directors, however must be legitimate stakeholders of Yerba Buena Gardens.

FISCAL IMPACT

As noted above, as of January 1, 2011 tax increment financing for Yerba Buena Gardens ended. In addition, the lease payments made by Moscone Convention Center to OCII, which flowed to Yerba Buena Gardens ended in 2015. However, the former Redevelopment Agency entered into long-term leases (up to 90 years) for most of the land within the Yerba Buena Gardens, which are still in effect.

As a result, Yerba Buena Gardens, which is a combination of private commercial and retail properties and public cultural and recreational facilities, gardens, plazas, and open spaces, receive annual rental income, primarily through ground leases and other agreements, to fully support the ongoing cultural facilities and gardens. However, all of these funds are restricted revenues and can only be used for maintenance, operations and security of Yerba Buena Gardens as well as for funding the cultural facilities and programming activities.

As shown in the Attachment, provided by OCII as of June 13, 2016, Yerba Buena Gardens actual revenues in FY 2014-15 totaled \$13,295,040 and expenses totaled \$8,247,280, resulting in a surplus of \$5,047,760. This surplus was added to the existing cash balance of \$8,573,253, for a total available balance to be carried forward of \$13,621,013. This cash balance can be used for capital improvements and/or to fund shortfalls in annual operating costs.

However, as shown in the Attachment, over the next ten years, revenues are projected to decrease, ranging between \$9.6 million to \$11.6 million, with expenses ranging between \$10.6 million and \$12.8 million. The reduction in revenues is primarily attributed to the loss of Moscone Convention Center lease payments. The increase in expenditures is primarily

attributed to annual growth in operating expenses coupled with large projected increases in capital expenditures.

Ten year capital costs are estimated at approximately \$30 million. However, Mr. Updike advises that the long term capital budget for Yerba Buena Gardens is currently under review. The City's Capital Planning Committee and staff, working with the Real Estate Division and the City Administrator, need to more carefully vet the assumptions regarding capital repair and replacement and identify revenue sources to fund capital needs at Yerba Buena Gardens. This capital funding review must be part of a larger financial analysis to be incorporated into the master lease provisions between the City and the Yerba Buena Gardens Conservancy. As noted above, the Real Estate Division will provide the results of this capital financial analysis and recommendations for funding capital improvements to the Board of Supervisors in 2017 when the master lease is subject to approval.

It should be noted that the Marriott Hotel and Metreon, together contribute approximately 88% of Yerba Buena Gardens annual operating revenues. In addition, annual revenues will vary with the economy, as various leases are based on a percentage of room and beverage sales. As shown in the Attachment, Yerba Buena Gardens also relies on Gardens Maintenance, Operations and Security (GMOS) charges to various tenants, which are projected to increase with cost of living adjustments annually. In addition, the Attachment does not account for any future Yerba Buena Gardens Conservancy costs, which may result.

POLICY CONSIDERATION

Pursuant to Redevelopment Dissolution Law and the Property Management Plan for Yerba Buena Gardens, OCII is required to transfer Yerba Buena Gardens properties to the City for governmental purposes. The City's Office of the City Administrator has agreed to accept Yerba Buena Gardens to be used for governmental purposes (parks, recreation, cultural facilities), including the restricted long-term revenues, capital and operating reserve accounts and numerous related enforceable obligations and agreements. These long term agreements require the continued operation, maintenance, security and funding of open space first, and the funding of cultural operations second, at Yerba Buena Gardens. Since the transfer of Yerba Buena Gardens from OCII to the City is specified for governmental purposes, the transfer price would be \$0. Mr. Updike advises that this transfer is anticipated to occur in early 2017.

The actual conditions of the property transfer from OCII to the City are not the subject of this resolution, which would be included in a future resolution, subject to approval by the Board of Supervisors in early 2017. Similarly, the proposed resolution would not approve the long-term master lease between the City and the new nonprofit Yerba Buena Gardens Conservancy, which would also be subject to future Board of Supervisors approval in 2017. Rather, the proposed resolution would approve the policy to establish a new public benefit civic nonprofit entitled the Yerba Buena Gardens Conservancy, created specifically to assume the long-term operating and management responsibility for Yerba Buena Gardens under a master lease with the City. As a result, such a master lease with the Yerba Buena Gardens Conservancy would be awarded as a sole source award with the City.

RECOMMENDATIONS

1. Approval of the proposed resolution is a policy decision for the Board of Supervisors.
2. If the Board of Supervisors approves this resolution, amend the proposed resolution to
 - a. provide guidance to the newly formed nonprofit and the Real Estate Division regarding who will make the appointments, the appointment process and weighting of the Board of Directors positions; and
 - b. amend page 4, lines 11 through 17 to delete the current language and instead state that the Real Estate Division will lead the analysis and recommendations related to Yerba Buena Gardens' long-range capital improvement funding needs and the potential revenues sources to address these needs with such information to be provided to the Board of Supervisors when the master lease is subject to approval in 2017.

Yerba Buena Gardens Cash Flow Projections FY 2014/15 through FY 2025/26*

Cash Account Index Code CIVBGG0TH

	Annual Projections										
	Actual FY 2014/15 ^(a)	Year 1 FY 2015/16 ^(a)	Year 2 FY 2016/17	Year 3 FY 2017/18	Year 4 FY 2018/19	Year 5 FY 2019/20	Year 6 FY 2020/21	Year 7 FY 2021/22	Year 8 FY 2022/23	Year 9 FY 2023/24	Year 10 FY 2024/25
Revenues											
Boxed Foods (CB-2 East Café) - Rent	\$ 88,029	\$ 88,032	\$ 60,449	\$ 93,393	\$ 96,195	\$ 99,081	\$ 102,053	\$ 105,115	\$ 108,268	\$ 111,516	\$ 114,862
Boxed Food (CB-2 East Café) - GIMOS ^(b)	11,381	11,381	11,528	11,874	11,875	12,231	12,598	12,976	13,365	13,766	14,179
Marriott Hotel Lease - Minimum Rent	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Marriott Hotel Lease - Percentage Rent ^(b)	5,514,485	5,129,014	5,231,369	5,335,770	5,442,260	5,550,880	5,661,672	5,774,680	5,889,948	6,007,521	6,127,446
Melroon (CB-2 Retail Lease) - Minimum Rent	958,151	958,151	958,151	958,151	958,151	1,101,874	1,101,874	1,101,874	1,101,874	1,101,874	1,101,874
Melroon (CB-2 Retail Lease) - Percentage Rent	0	0	0	0	0	0	0	0	0	0	0
Melroon (CB-2 Retail Lease) Retail Lease - GIMOS ^(b)	757,860	773,017	788,477	804,247	820,332	836,739	853,473	870,543	887,954	905,713	923,827
Four Seasons (CB-1 Retail Lease) - Minimum Rent ^(b)	82,078	82,078	82,078	82,078	82,078	106,713	106,713	106,713	106,713	106,713	106,713
Four Seasons (CB-1 Retail Lease) - Percentage Rent ^(b)	10,532	23,000	23,460	23,929	24,408	24,896	25,394	25,902	26,420	26,948	27,487
Four Seasons (CB-1 Retail Lease) - GIMOS ^(b)	191,503	201,182	205,206	209,310	213,496	217,766	222,121	226,564	231,095	235,717	240,431
Moscone Center 1988 Project Lease Revenue ^(b)	3,480,000	-	-	-	-	-	-	-	-	-	-
Samovar Tea Lounge CB-2 West Café - Rent	85,976	85,955	59,037	91,212	93,948	96,767	99,670	102,660	105,740	108,912	112,179
Samovar Tea Lounge CB-2 West Café - GIMOS ^(b)	10,610	10,610	10,747	11,069	11,401	11,744	12,096	12,459	12,832	13,217	13,614
St. Regis Hotel (EB-2A) - GIMOS ^(b)	184,415	189,520	193,310	197,177	201,120	205,143	209,245	213,430	217,699	222,053	226,494
VSC Sports, Inc. (Ice Rink & Bowling Center) - Rent ^(b)	392,854	395,000	402,900	410,958	419,177	427,561	436,112	444,834	453,731	462,805	472,062
VSC Sublease: Mo's Grill - Rent + Percentage Rent ^(b)	13,583	31,740	31,740	43,704	43,704	44,578	45,470	46,379	47,307	48,253	49,218
VSC Sublease: Pin Up Diner - Rent ^(c)	13,583	31,740	31,740	43,704	43,704	44,578	45,470	46,379	47,307	48,253	49,218
VSC Sublease: Pin Up Diner - Percentage (TBD - Tenant to provide)	0	0	0	0	0	0	0	0	0	0	0
706 Mission - GIMOS Payment	0	0	0	0	130,000	265,200	270,504	275,914	281,432	287,061	292,802
One-time Fees/Payments ^(b)	0	0	1,000,000	0	0	0	0	0	0	0	0
Estimated Interest Earnings on Cash Accounts (TBD to be provided at a later date)	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Total Revenues	\$ 13,295,040	\$ 9,611,280	\$ 10,688,452	\$ 9,902,872	\$ 10,190,467	\$ 10,631,170	\$ 10,788,995	\$ 10,950,041	\$ 11,114,377	\$ 11,282,069	\$ 11,618,469
Percentage Change in Revenues	-	-29%	11%	-7%	-3%	4%	1%	1%	2%	2%	3%
Expenses											
Yerba Gardens Operations (MJM) ^(c)	\$ 3,390,661	\$ 3,780,000	\$ 4,150,000	\$ 4,274,500	\$ 4,402,735	\$ 4,534,817	\$ 4,670,862	\$ 4,810,987	\$ 4,955,317	\$ 5,103,977	\$ 5,257,096
Yerba Gardens Capital (MJM) ^(c)	631,895	3,960,000	4,200,000	3,149,781	2,148,477	2,721,698	1,480,136	1,222,674	1,265,590	2,053,463	1,345,588
Yerba Buena CBD (Payments to Public Agencies)	67,746	86,806	88,542	90,313	92,119	93,962	95,841	97,758	99,713	101,707	103,741
Yerba Buena Arts & Events	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000
Yerba Buena Center for the Arts	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000	3,330,000
Yerba Buena Children's Creativity Museum	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000
Legal Fees ^(c)	0	40,000	40,000	41,200	42,436	43,709	45,020	46,371	47,762	49,195	50,671
Property Insurance ^(b)	69,640	68,806	70,182	72,288	74,456	76,690	78,991	81,360	83,801	86,315	88,905
Staff Costs ^(b)	82,338	106,631	298,416	307,368	316,590	326,087	335,870	345,946	356,324	367,014	378,024
Total Expenses	\$ 8,247,280	\$ 12,047,243	\$ 12,852,140	\$ 11,940,450	\$ 11,081,813	\$ 11,801,963	\$ 10,711,719	\$ 10,610,096	\$ 10,813,507	\$ 11,766,671	\$ 11,229,025
Percentage Change in Expenses	-	46%	7%	-7%	-7%	6%	-9%	-1%	2%	9%	-5%
Revenues less Expenses-Surplus/(Deficit)	\$ 5,047,760	\$ (2,435,963)	\$ (2,163,689)	\$ (2,037,578)	\$ (891,346)	\$ (1,170,792)	\$ 77,276	\$ 339,945	\$ 300,870	\$ (484,601)	\$ 389,444
Revenue less Expenses	5,047,760	(2,435,963)	(2,163,689)	(2,037,578)	(891,346)	(1,170,792)	77,276	339,945	300,870	(484,601)	389,444
Cash balance Carried Forward from previous fiscal year	8,573,253	13,621,013	11,185,050	9,021,361	6,983,784	6,092,438	4,921,645	4,998,921	5,338,866	5,639,736	5,155,134
Year-End Cash Balance	\$ 13,621,013	\$ 11,185,050	\$ 9,021,361	\$ 6,983,784	\$ 6,092,438	\$ 4,921,645	\$ 4,998,921	\$ 5,338,866	\$ 5,639,736	\$ 5,155,134	\$ 5,544,578
Percentage Change in Cash Balance	-	-20%	-20%	-30%	-15%	-23%	2%	6%	5%	-9%	3%

* Refer to Notes Worksheet for Definitions/Footnotes (a)-(f); Consumer Price Index (CPI):

NOTE: The worksheet above reflects cash. Amounts authorized for capital expenditures but not spent in a given fiscal year are not reflected above. Unspent capital funds carry over to the next fiscal year, and are subtracted from the next fiscal year's available cash. See example below:

	FY 2014/15	FY 2015/16
Calculation of Capital Funds Authorized but not Spent		
Capital budget authorization	2,950,058	2,950,058
Less actual capital expenditures	631,895	631,895
Balance of capital appropriations authorized but not spent in FY 2014/15	2,318,163	2,318,163
Effective Year-End Cash Balance		
Projected cash balance as of end of FY 2015/16 as shown above	\$ 11,185,050	\$ 11,185,050
Less: Balance of capital appropriations authorized but not spent in fiscal 6/30/15	(2,318,163)	(2,318,163)
Effective cash balance as of 6/30/16	\$ 8,866,887	\$ 8,866,887