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## MEMORANDUM

TO: Adam Van de Water, Office of Economic and Workforce Development  
 CC: Angela Calvillo, Clerk of the Board of Supervisors  
 FROM: Brian F. Crossman *BC*  
 Deputy City Attorney  
 DATE: November 6, 2015  
 RE: Economic Development Subsidies Under Government Code Section 53083

### SUMMARY

You requested an opinion from our office regarding the Mission Bay Alliance's assertion that the proposal to fund certain capital improvements and ongoing expenditures for services through the Mission Bay Transportation Improvement Fund (the "Fund") constitutes an "economic development subsidy" under California Government Code Section 53083 (the "Statute") and must comply with its procedural and reporting requirements. If the Board of Supervisors approves the ordinance establishing the Fund, then monies in the Fund would pay for certain public infrastructure improvements, equipment, and certain public services for the Golden State Warriors Event Center and Mixed-Use Development Project at Mission Bay Blocks 29-32 (the "Project"), including those set forth in the Transportation Management Plan (TMP) and Transit Service Plan (TSP). For the reasons more fully discussed below, the Fund is not an economic development subsidy under the Statute and is not subject to its requirements, and even if it were, the City has complied with the Statute by conducting noticed public hearings and reporting the required information as part of the publicly available record of proceedings for the Project.

### BACKGROUND

Section 53083 is a relatively new provision of the California Government Code, which was added by AB 562 (Williams) and became effective on January 1, 2014. The Statute requires local agencies, including the City and County of San Francisco, to provide specific information to the public and hold a public hearing before approving an economic development subsidy; and to then later issue a public report on the subsidy and hold a public hearing to consider comments received on the report.

The Statute broadly defines "economic development subsidy" as

any expenditure of public funds or loss of revenue to a local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

(Gov. Code, § 53083(g)(1).) The information that must be disclosed under section 53083 includes (1) the name and address of beneficiaries of the subsidy; (2) start and end dates and

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schedule for the subsidy, if applicable; (3) a description of the subsidy, including the estimated total amount of the expenditure of public funds or revenue lost due to the subsidy; (4) a statement of the public purposes for the subsidy; (5) the projected tax revenue to the local agency due to the subsidy; and (6) the estimated number of jobs created by the subsidy, broken down by full-time, part-time, and temporary positions. (*Id.*, § 53083(a).) The local agency must make this information available in written form and through its internet website, if applicable. (*Ibid.*)

The required public hearing need not be devoted solely to the subsidy, but rather, may be combined with any other public hearing relating to consideration and approval of the subsidy. There are no reported appellate decisions interpreting the requirements of the Statute.

## ANALYSIS

**1. The Fund is not an Economic Development Subsidy.**

Despite the Statute's broad definition of "economic development subsidy," the Fund would not constitute an economic development subsidy, and thus would not trigger the procedural and reporting requirements of section 53083. The capital improvements and ongoing expenditures that monies in the Fund would pay for are not "for the purpose of stimulating economic development," but rather to help accommodate the transit needs of the existing and anticipated development in Mission Bay, including the Project and surrounding neighborhoods. As stated in section 10.100-364(a) of the proposed ordinance establishing the Fund, the Fund is "for the purpose of safeguarding monies in the General Fund to pay for: *City services and capital improvements* to address transportation and other needs of the *community*" in connection with Project events. (San Francisco Board of Supervisors File No. 150995 [emphasis added].)

While the Statute is not expressly limited to direct payments to (or lost revenue from) private beneficiaries, it is unlikely the Legislature intended expenditures of public funds for public services and off-site infrastructure improvements, such as those at issue here, to constitute an economic development subsidy. As introduced, AB 562 required disclosure of any "entity or individual" that is the beneficiary of the subsidy. This term was later replaced by "all *corporations* or any other *business entities*, except for sole proprietorships." (See AB 562, as Amended in Senate, August 15, 2013 [emphasis added].) The change implies that the Legislature intended to require reporting of expenditures benefiting private, rather than public interests.

This conclusion is reinforced by the Statute's non-exhaustive list of economic development subsidies, which includes grants, loans, loan guarantees, fee waivers, tax credits, and other direct payments or credits, but not expenditures on public infrastructure or services. (See Gov. Code, § 53083(g)(1).) Also, the Statute excludes tax increment financing for redevelopment project areas; tax increment financing was commonly used to finance public infrastructure improvements. Indeed, a contrary conclusion would suggest that all expenditures by local governments for public infrastructure and public services that a project sponsor does not pay for directly and in full (a situation that extends to many private projects), constitute an unlawful subsidy, but this is not the case and there is nothing to indicate that the Legislature could have intended it to be so.

Here, the Fund would merely identify and place in a special account monies to pay for certain public improvements and services in the vicinity of the Project that are intended to

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benefit the community at large, including the employees of the University of California at San Francisco (UCSF) hospitals, businesses in and near Mission Bay South, visitors, and residents in the general area. Accordingly, expenditures from the Fund, consistent with the stated purpose and the defined "Required Uses" of the Fund, would not be an "economic development subsidy."

**2. Even if the Fund were an Economic Development Subsidy the City Has Complied with the Notice Requirements.**

Though the Fund is not an economic development subsidy under section 53083, the City has still satisfied the requirements of the Statute through its public hearings and by making all of the information set forth in section 53083(a) available to the public through the Project's online administrative record of proceedings. This record, accessible at <http://www.gsweventcenter.com> and through links posted on the City's website, contains the following information, consistent with the Statute:

Section 53083(a)(1). Beneficiary. As indicated in the numerous applications, staff reports, correspondence, and other materials in the online record, the Project sponsor is GSW Arena, LLC, an affiliate of Golden State Warriors, LLC. The Project sponsor's address is 1011 Broadway, Oakland, CA 94607.

Section 53083(a)(2). Term of Subsidy. Monies in the Fund would likely first be expended for the capital improvements, beginning in the current Fiscal Year. The ongoing expenditures would be annual appropriations that would remain in effect as long as events are held at the Event Center, without any definitive end date, unless the Board of Supervisors reduces the budgeted expenditures following a public hearing.

Section 53083(a)(3). Description of Subsidy. The capital improvements will total an estimated \$61.9 million. For the first five years that the Event Center is in operation, the amount in the Fund for estimated capital improvements and ongoing expenditures would be no less than \$8.1 million annually, with incremental increases to no less than \$9.1 million in the fifth year. In other years, the City would deposit an amount into the Fund based on budgeted expenditures included in the transportation plan for the Event Center and related transportation improvement measures, and following the opening of the Event Center, budgeted expenditures of the Department of Public Works and the Police Department addressing community needs related to the operation of the Event Center. The City's deposits to the Fund would be subject to a cap, set and adjusted by the City Controller, based on 90% of the unrestricted, discretionary General Fund revenues that the City expects to receive from the Project site and events held at the Event Center.

Section 53083(a)(4). Statement of Public Purpose. The Fund is expressly intended to safeguard monies in the General Fund to pay for City services and capital improvements to address transportation and other needs of the community in connection with events at the Project site. These include, but are not limited to, measures in the City's transportation services plan for the Event Center and enhancements to multi-modal transportation serving Mission Bay South and surrounding areas beyond what is necessary to address the community's needs with regard to events at the Event Center. As further described in the proposed ordinance, the Fund will be used to pay for the costs of procuring transit equipment and making transportation infrastructure improvements, such as purchasing additional Municipal Railway light rail vehicles, as well as to

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pay for the costs of providing services to the Project site and surrounding neighborhood, including public transit services, special event shuttles, parking and traffic engineering and control services, pedestrian and bicycle access programs, parking enforcement programs, local access programs (including, without limitation, access to the UCSF hospitals in Mission Bay South), police services, litter pick-up, street and sidewalk cleanup, among other services.

Section 53083(a)(5). Projected Tax Revenue. The projected tax revenue to the City and County of San Francisco is detailed in the fiscal feasibility analysis of the Project, completed by Economic & Planning Systems (EPS) and peer-reviewed by Keyser Marston Associates, and also found to be generally reasonable by the City's Controller. Under those projections, the anticipated annual Project-generated tax revenues to the City's General Fund are approximately \$14 million; one-time tax revenues to the City's General Fund are approximately \$8.8 million (i.e., \$27 million less estimated transit impact development fee).

Section 53083(a)(6). Estimated Job Creation. As discussed in the Notice of Preparation and Initial Study, the Project is expected to generate a total of approximately 3,578 new jobs. Of these projected new jobs, 2,578 would be full-time equivalent jobs and 1,000 would "day of" workers for basketball games and other events.

While section 53083 requires a public hearing regarding the economic development subsidy, it does not require a separate hearing devoted solely to the subsidy. Rather, the hearing may be combined with any other hearing related to consideration and approval of the subsidy. (Gov. Code, § 53083(b).) Here, the Fund was already considered at a noticed public hearing before the Board of Directors of the Municipal Transportation Agency on November 3, 2015; that hearing alone would satisfy the requirements of the Statute. Also, the Board of Supervisors' Budget and Finance Committee will consider the Fund at a noticed public hearing on November 9, 2015, and the Board of Supervisors is expected to consider the Fund at a noticed public hearing in December. Accordingly, the Fund has and will continue to be, the subject of public review at noticed public hearings before the City's boards and committees.

## CONCLUSION

In light of the language and intent of the proposed ordinance establishing the Fund, including its stated purpose and required uses, the Fund would not be considered an economic development subsidy under the Statute. And even if it were an economic development subsidy for purposes of the Statute, the City's online administrative record of proceedings and its public hearings regarding the Fund, as well as documents in the file for those hearings, comply with the reporting and hearing requirements of the Statute.