

[Pier 70 plan and lease approvals; General Fund financing for Pier 70 waterfront improvements; transfer of funds according to agreements between the Port Commission and other departments; priorities for use of Port funds]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by adding Sections B7.310 and B7.320 , and amending Section B6.406, to: authorize the Board of Supervisors to approve a Pier 70 financial and land use plan; authorize a mechanism for the City to appropriate General Fund revenues in an amount up to 75% of the projected hotel and payroll taxes attributable to new development at Pier 70 to finance waterfront improvements; waive Board approval of leases consistent with the approved Pier 70 plan; require the City to appropriate funds for certain Board-approved agreements between City departments and the Port Commission; and, updating the priorities for use of Port revenues.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2008, a proposal to amend the Charter of the City and County by adding Sections B7.310 and B7.320, and by amending Section B6.406, to read as follows:

Note: Additions are *single-underline italics Times New Roman*.
Deletions are ~~*strikethrough italics Times New Roman*~~.

SEC. B6.406. HARBOR REVENUES AND EXPENDITURES.

The revenues of the harbor and of all properties and facilities incident thereto, or used in connection therewith, shall be deposited in a separate fund in the treasury of the City and County; and a harbor trust fund or trust funds shall be established by the City and County; and

the City and County shall deposit in the fund or funds all monies received attributable to facilities on the transferred lands in the harbor.

Subject to the terms and conditions of Statute 1968, ch. 1333, appropriations from such funds shall be made for the following purposes and in the order named, viz:

(a) for the payment of maintenance and operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the commission may establish or the board of supervisors may require;

~~(b) for payment of the principal and interest of any obligations of the State of California and assumed or agreed to be paid by the City and County of San Francisco;~~

~~(b) (e) for the payment of principal, interest, reserve funds, sinking funds, and other funds established for the benefit of revenue bonds issued pursuant to the authority contained in Section 7.305 of any forms of indebtedness issued or undertaken by or on behalf of the commission for any purpose authorized under this charter, including, but not limited to, revenue bonds, general obligation bonds, infrastructure financing district bonds, certificates of participation, lease revenue bonds, commercial paper, variable rate demand notes, auction rate securities, bond anticipation notes and other evidences of indebtedness;~~

~~(c) (d) for capital improvements to, and reconstruction and replacement of, the properties, equipment and facilities of the harbor or used in connection with the operation thereof, and~~

~~(e) for the payment of the principal and interest on any general obligation bonds issued by the City and County of San Francisco for the acquisition, construction, repair or extension of said harbor or of any of the facilities used in connection therewith;~~

~~(f) an amount which shall be sufficient to meet the cost of reconstruction and replacement made necessary by the physical and functional depreciation of any of the properties or equipment of said harbor as the same shall occur;~~

(g) to pay for extension and betterments to said harbor or to the equipment and facilities thereof; and,

(d) (~~h~~) to establish a reserve, surplus or sinking fund for ~~the improvement or extension of the harbor or any facility used in collection therewith~~ harbor operations, capital improvements, reconstruction, and replacement of equipment or facilities used in connection thereto as the commission may establish.

In the event of a conflict between any trust indenture or other instrument securing or evidencing indebtedness outstanding as of January 1, 2009 and authorized in this charter and the priorities set forth in this Section B6.406, the priorities of the debt instrument will control.

SEC. B7.310. PIER 70 WATERFRONT DISTRICT.

(a) The Port of San Francisco's southern waterfront includes a site known as Pier 70. For over 150 years, some portion of this site has been in use for ship building and repair, or steel production, as well as for other heavy industrial uses. In 2001, the California State Office of Historic Preservation determined that Pier 70's approximately 40 historic buildings, structures, and features are eligible for the National Register collectively as contributors to a Pier 70 historic district. This Section B7.310 is intended to enable the City and County, through its Port Commission, to rehabilitate the Pier 70 area by establishing planning, financing and project approval mechanisms appropriate to the area. These mechanisms will serve a significant public purpose by preserving and restoring historic waterfront properties in need of repair, restoring waterfront land, and building new waterfront parks and maritime facilities.

(b) The Port Commission may submit to the Board of Supervisors for approval a financial and land use plan or plans for all or a portion of Pier 70 (each a "Pier 70 Plan") that includes a description of the boundaries of a Pier 70 planning area ("Pier 70 Waterfront District") and projections of the Port's need for financing, in addition to authorized property tax increment financing, to preserve and restore deteriorated Pier 70 historic waterfront properties,

seismically strengthen Pier 70 piers and structures, remediate and restore contaminated waterfront land and structures, build new waterfront parks, and build maritime facilities (“Waterfront Improvements”). The financing plan may include, without limitation, issuance of debt to finance Waterfront Improvements or direct payments to a tenant for the Waterfront Improvements. As used in this Section B7.310, Waterfront Improvements include rehabilitation of an existing historic resource consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, seismic strengthening of existing structures, environmental remediation and/or mitigation consistent with applicable regulations and/or a plan approved by a regulatory agency with jurisdiction over the contaminated area, construction and landscaping of waterfront open space, including natural shoreline habitat, construction of utility infrastructure necessary to achieve compliance with environmental performance standards that exceed applicable building code requirements, and the construction or rehabilitation of maritime facilities.

(c) Before proposing to issue indebtedness to finance Waterfront Improvements or to assume the responsibility to pay for the improvements pursuant to this Section B7.310, the Port Commission, by resolution, must approve a capital budget for the proposed Waterfront Improvements and find that the new lease revenues from private investment in and development of the proposed Pier 70 Waterfront District for a period of twenty years, commencing with the Port’s projected date of issuance of a certificate of occupancy for a lease identified by the Port for all or a portion of the Pier 70 Waterfront District, and property tax increment available under the Pier 70 Plan, are insufficient to finance the Waterfront Improvements.

(d) The Clerk of the Board of Supervisors shall refer the Pier 70 Plan to the Controller within thirty days after the Port Commission's submission to the Board of Supervisors. Within ninety days of the Clerk's referral, the Controller and the Tax Collector, in consultation with the Department of Real Estate and the Port Commission, shall report to the Board of Supervisors the following:

1. The total amount of taxes received by the City and County from (A) the City Payroll Expense Tax under Article 12-A of the Business and Tax Regulations Code, as amended from time to time (the "Payroll Tax"), from businesses located in the Pier 70 Waterfront District, and (B) Tax on Transient Occupancy of Hotel Rooms under Article 7 of the Business and Tax Regulations Code, as amended from time to time (the "Hotel Tax"), from any hotel rooms located in the Pier 70 Waterfront District (the "Base Year Tax Revenues") in the full fiscal year immediately preceding the submission of the proposed Pier 70 Plan to the Board of Supervisors; and

2. The projected annual increases in Payroll Tax and the Hotel Tax above the Base Year Tax Revenues that will accrue to the General Fund for each year ("Pier 70 Annual Payroll and Hotel Tax Increment") for a twenty year period following the issuance of a certificate of occupancy related to a Port lease identified by the Port for all or a portion of the Pier 70 Waterfront District, using assumptions about new lease and tax revenues from development of allowed uses in the Pier 70 Waterfront District.

The publication of the Controller's and Tax Collector's report will not be a violation of Business & Tax Regulations Code Section 6.22-1. The Controller and the Tax Collector shall be entitled to reimbursement of their costs to perform their responsibilities under this Section B7.310.

(e) The Board of Supervisors may approve the Pier 70 Plan, with or without the financing for Waterfront Improvements described by the plan. The Board of Supervisors may approve the financing for Waterfront Improvements described in the plan, if it finds that new lease revenues from private investment in and development of the proposed Pier 70 Waterfront District for a period of twenty years, commencing with the Port's projected date of issuance of a certificate of occupancy for a lease identified by the Port for all or a portion of the Pier 70 Waterfront District, and property tax increment available under the Pier 70 Plan, are insufficient to finance the Waterfront Improvements.

(f) If the Board of Supervisors approves the Pier 70 Plan and associated financing for Waterfront Improvements, then, for the purposes of this Section B7.310, the Base Year Tax Revenues for the Pier 70 Plan will be the total Payroll Tax from businesses located in the Pier 70 Waterfront District and any Hotel Tax from any hotel rooms in the Pier 70 Waterfront District in the fiscal year preceding Port Commission issuance of debt to finance Waterfront Improvements or obligation to first pay for Waterfront Improvements pursuant to this Section B7.310, and the Controller and the Tax Collector, in consultation with the Department of Real Estate and the Port Commission, shall revise their projections of Pier 70 Annual Payroll and Hotel Tax Increment for a twenty year period, commencing on the Port's projected date of its issuance of debt for, or obligation to pay for the construction of Waterfront Improvements pursuant to this Section B7.310, based on updated assumptions about new lease and tax revenues from development of allowed uses in the Pier 70 Waterfront District. These updated assumptions shall serve as the basis for appropriations pursuant to this Section B7.310 for the remainder of the term of the Pier 70 Plan.

(g) If the Board of Supervisors approves financing for Waterfront Improvements described in the Pier 70 Plan, then the City and County shall appropriate from discretionary General Fund revenues to the harbor trust fund the amount necessary to pay debt service on indebtedness issued by the Port Commission to finance Waterfront Improvements or to fund the Port's obligation to pay for Waterfront Improvements pursuant to this Section B7.310 in an amount up to seventy-five percent (75%) of the Pier 70 Annual Payroll and Hotel Tax Increment beginning in the fiscal year in which the Port Commission is obligated to A) begin paying for the Waterfront Improvements, or B) pay debt service on indebtedness that it has issued to finance Waterfront Improvements and for each subsequent fiscal year until the earlier of (i) the date the Controller certifies that the Port Commission has retired all indebtedness issued or to finance the Waterfront Improvements or fully satisfied its obligation to pay for the Waterfront Improvements or (ii) twenty fiscal years commencing with the first fiscal year that the Port

Commission is obligated to pay such debt service or payment on the Waterfront Improvements. The City and County shall appropriate the funds to the harbor trust fund notwithstanding the actual amount of the annual increase in Payroll Taxes and Hotel Taxes during any fiscal year, without any adjustment based on the actual amounts of such taxes paid or accruing to the City and County. In no event may the amount appropriated to the harbor trust fund in the aggregate be greater than seventy-five percent (75%) of the amount of Pier 70 Annual Payroll and Hotel Tax Increment estimated by the Controller for a 20-year period pursuant to subsection (f). The Port may use the funds appropriated solely to finance the construction of Waterfront Improvements described in its Pier 70 Plan and any amendments to the plan by the Port Commission and the Board of Supervisors.

(h) The Board of Supervisors' approval of the Pier 70 Plan, with or without approval of the financing for Waterfront Improvements, shall constitute approval by the Board of Supervisors of any lease for a project developed under the Pier 70 Plan under Article IX, Section 9.118 of this Charter upon approval by the Port Commission if all of the following conditions are met:

1. The Controller, in consultation with the Department of Real Estate, finds the lease consistent with the Pier 70 Plan;

2. If required for purposes of the receipt of federal historic tax credits, the lease binds the lessee to obtain from the National Park Service and/or State Historic Preservation Office a finding of consistency of the federally-subsidized historic rehabilitation project(s) contemplated by the lease with the Secretary of the Interior's Standards for the Treatment of Historic Properties;

3. If required, the lease binds the lessee to obtain a permit from the Bay Conservation and Development Commission for the improvement and maintenance of the 100 foot shoreline band along Pier 70 in the premises of the lease;

4. If required, the State of California has approved the consistency of the Pier 70 Plan, or portions thereof, with the Burton Act trust and the public trust for navigation, commerce and fisheries; and

5. If required, any applicable environmental regulatory agency has approved a site remediation or site management plan, or the equivalent, for the relevant portion of Pier 70, where the Port or a former owner, occupant, or operator is the primarily responsible party.

SEC. B7.320. AGREEMENTS WITH OTHER CITY DEPARTMENTS.

(a) The Mayor may submit to the Board of Supervisors for approval a memorandum of understanding or other form of interagency agreement between the Port Commission and another department or departments of the City and County, approved by the Port Commission by resolution, that requires the department(s) to expend funds or to transfer funds to the Port Commission, or requires the Port Commission to transfer funds to the department(s).

(b) If the Board of Supervisors approves the interagency agreement by resolution, the City and County shall appropriate funds sufficient to fund the expenditure or transfer until such time as the agreement expires, or is terminated by the Port Commission and other departmental parties, subject to the approval of the Mayor and the Board of Supervisors by resolution.

(c) Any modification of the agreement affecting the amount to be expended or transferred shall be approved by the Mayor and the Board of Supervisors by resolution.

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

By: _____
ROBERT A. BRYAN
Deputy City Attorney