

BOARD of SUPERVISORS



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MEMORANDUM

TO: Elaine Forbes, Executive Director, San Francisco Port
Ben Rosenfield, City Controller, Office of the Controller

FROM: Victor Young, Assistant Clerk
Rules Committee

A handwritten signature in cursive script that reads "Victor Young".

DATE: June 13, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on June 4, 2019:

File No. 190657

Ordinance amending the San Francisco Administrative Code Special Tax Financing Law, constituting Article 43.10, to authorize special tax financing of certain facilities and services related to property in the jurisdiction of the Port of San Francisco.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Daley Dunham, SF Port
Amy Quesada, SF Port
Todd Rydstrom, Office of the Controller

1 [Administrative Code - San Francisco Special Tax Financing Law - Port of San Francisco]

2
3 **Ordinance amending the Administrative Code Special Tax Financing Law, constituting**
4 **Article 43.10, to authorize special tax financing of certain facilities and services related**
5 **to property in the jurisdiction of the Port of San Francisco.**

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7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. FINDINGS. The Board of Supervisors of the City and County of San
16 Francisco hereby finds, determines and declares:

17 (a) Article X of Chapter 43 of the Administrative Code (“Special Tax Financing Law”) provides an alternative method of financing certain public and private capital facilities and services in the City and County of San Francisco (“City”).

18 (b) California Statutes of 1968, Chapter 1333 (“Burton Act”) and the San Francisco
19 Charter Sections 4.114 and B3.581 empower the City, acting through the Port Commission,
20 with the authority and duty to use, conduct, operate, maintain, manage, regulate and control
21 the lands under the Port Commission jurisdiction.

22 (c) In 1990 the City's voters adopted Proposition H to require the City to prepare a
23 comprehensive waterfront land use plan with maximum feasible public input. Following a 7-
24 year public planning process, the Port Commission adopted in 1997 the Port of San Francisco
25

1 Waterfront Land Use Plan (“Waterfront Plan”) and has periodically made minor amendments
2 to address specific issues arising from capital development projects to existing Port
3 resources.

4 (d) In 2015, Port staff presented a comprehensive review of land use changes and
5 events that have occurred under the Waterfront Plan to the Port Commission.

6 (e) In furtherance of the Burton Act and the Waterfront Plan, and with Board of
7 Supervisors approval, the Port has entered into long term leases and development and
8 disposition agreements for the improvement and rehabilitation of Port land and assets,
9 including (i) the 20th Street Historic Buildings with Historic Pier 70, LLC (Resolution No. 273-
10 14, a copy of which is on file with the Clerk of the Board in File No. 140729), (ii) approximately
11 28 acres of real property located in the southeast portion of the larger area known as Seawall
12 Lot 349 or Pier 70 with FC Pier 70, LLC (Resolution No. 401-17, a copy of which is on file with
13 the Clerk of the Board in File No. 170986) and (iii) Seawall Lot 337 Associates, LLC, for
14 approximately 28 acres of real property that are proposed to be developed for a project
15 known as the Mission Rock project (Resolution No. 42-18, a copy of which is on file with the
16 Clerk of the Board in File No. 180092).

17 (f) The resolutions cited in the previous paragraph include the Board of Supervisors’
18 findings pursuant to the California Environmental Quality Act (California Public Resources
19 Code section 21000 et seq., “CEQA”) and Administrative Code Chapter 31, which findings are
20 incorporated herein by reference as though fully set forth, copies of which are on file with the
21 Clerk of the Board in File Nos. 140729, 170986, and 180092.

22 (g) Approval of this Ordinance shall not be construed as approval of any capital
23 development project to any existing Port resource prior to CEQA compliance. The City will
24 conduct environmental review of any such future activities and retains its absolute discretion
25 to (a) require modifications to such proposed projects to mitigate significant adverse

1 environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts
2 of proposed projects, including the "no project" alternative; (c) require the implementation of
3 specific measures to mitigate the significant adverse environmental impacts of proposed
4 projects, as identified through environmental review; (d) reject all or part of a proposed project
5 if the economic and social benefits of the proposed project do not outweigh otherwise
6 unavoidable significant adverse impacts of that project; and (e) approve proposed projects
7 upon a finding that the economic and social benefits of the proposed project outweigh
8 otherwise unavoidable significant adverse environmental impact of that project; and (f) deny
9 proposed projects; and

10 (h) The Board of Supervisors wishes to make certain amendments to the Special Tax
11 Financing Law in furtherance of the Waterfront Plan and the Burton Act.

12
13 Section 2. Article X of Chapter 43 of the San Francisco Administrative Code is
14 hereby amended as follows:

15 A. Section 43.10.9 is hereby amended as follows:

16 SEC. 43.10.9. INCORPORATION OF THE MELLO-ROOS COMMUNITY FACILITIES
17 ACT OF 1982.

18 The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with
19 Section 53311 of Part 1, Division 2, Title 5 of the California Government Code) (the "Act"), as
20 amended from time to time, is incorporated in and made a part of this Article. Except as
21 otherwise provided by this Article, the purposes, *proceedings to establish a special tax district,*
22 *limitations on,* mode and manner of levying and collecting special taxes and the issuance of
23 bonds secured by special taxes shall be as prescribed in the *Act or in the proceedings to form a*
24 *district as set forth under this Article, or a combination thereof.*

25 B. Section 43.10.12 is hereby amended as follows:

1 SEC. 43.10.12. DEFINITIONS.

2 Unless the context otherwise requires, the terms defined in this Article shall have the
3 following meanings. Defined terms used in this Article but not defined in this Article have the
4 meaning given them in the Act.

5 (a) "Act" means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5,
6 commencing with Section 53311 of Part 1, Division 2, Title 5 of the California Government
7 Code), as amended from time to time.

8 (b) "Board of Supervisors" means the Board of Supervisors of the City and County of
9 San Francisco.

10 (c) "City" means the City and County of San Francisco.

11 (d) "Entitlement costs" means the costs to obtain approvals necessary to proceed with
12 development, such as the cost to comply with the California Environmental Quality Act, negotiate
13 transaction documents, conduct community outreach, and prepare development design and land use
14 requirements, but not expenses related to any campaign or ballot measure or any other expenses
15 prohibited by law. Entitlement costs may include interim costs as approved from time to time by the
16 Board of Supervisors..

17 (e) "Incidental expense" includes all of the following:

18 (1) The cost of planning and designing facilities to be financed pursuant to this Article,
19 including the cost of environmental evaluations of those facilities.

20 (2) The costs associated with the creation of the district, issuance of bonds,
21 determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred
22 in order to carry out the authorized purposes of the district.

23 (3) Any other expenses incidental to the construction, completion, and inspection of the
24 authorized work, including costs for temporary facilities with a useful life of at least 3 years that are
25 required to construct an authorized facility.

1 (4) Special taxes levied on a property in the district and paid by a developer on behalf of
2 a local agency or other landowner prior to the development of the property.

3 (f) "Interim cost" means the market-based return on a developer's unreimbursed capital as
4 agreed by the developer and the City in a written agreement.

5 ~~(g)~~—(d) "Services" means, in addition to the "Services" defined in Section 53317 of the
6 Act and 43.10.16 of this Article, operation and maintenance of any improvements that may be
7 financed under this Article or the Act, and any related studies, testing or monitoring.

8 C. Section 43.10.15 is hereby amended as follows:

9 SEC. 43.10.15. AUTHORIZED FACILITIES.

10 In addition to the facilities that may be financed under the Act, special taxes may be
11 levied and bonds may be issued to finance or refinance any of the following on or related to
12 any land in San Francisco the City, and the related interim costs:

13 (a) The acquisition, installation and improvement of energy efficiency, water
14 conservation, water pollution control, and renewable equipment with an estimated useful life
15 of five years or longer and/or energy efficiency, water conservation, water pollution control,
16 and renewable energy improvements that are attached to or on real property and in buildings,
17 whether such real property or buildings are privately or publicly owned. Energy efficiency,
18 water conservation, water pollution control and renewable energy improvements may only be
19 installed on a privately owned building and on privately owned real property with the prior
20 written consent of the owner or owners of the building or real property.

21 (b) The work deemed necessary to bring new or existing buildings or real property,
22 including privately owned buildings or real property, into compliance with seismic safety
23 standards or regulations. ~~Only work certified as necessary to comply with seismic safety standards or~~
24 ~~regulations by local building officials may be financed. No project involving the dismantling of an~~
25 ~~existing building and its replacement by a new building, nor the construction of a new or substantially~~

1 ~~new building may be financed pursuant to this subparagraph. Work on privately owned property may~~
2 ~~only be financed with the prior written consent of the owner or owners of the privately owned property.~~

3 (c) Demolition or partial demolition of existing buildings and structures, but only to the
4 extent that this work is required to prepare areas that will be (1) in a public right of way, (2) in a
5 publicly owned park or open space, (3) developed with other public facilities or improvements, (4) in a
6 privately owned, publicly accessible park or open space or (5) developed with facilities or
7 improvements that are being financed pursuant to subsection (f) and are listed in the
8 resolution of formation for the special tax district and the ordinance levying the special taxes in
9 the special tax district.

10 (d) Work on qualified historical buildings or structures, including deconstruction and
11 reconstruction work, relocation and flood-proofing costs. Such work shall be done carried out in
12 accordance with applicable historic rehabilitation standards the State Historical Building Code (Part
13 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code). Such wWork on
14 privately owned property may only be financed with the prior written consent of the owner or
15 owners of the privately owned property.

16 (ee) Sustainability studies and guideline documents related to development in the
17 planning area governed by the Central SoMa Plan & Implementation Strategy any area plan
18 document approved by the Board of Supervisors.

19 (df) The purchase, construction, reconstruction, expansion, improvement, or
20 rehabilitation of real or other tangible property with an estimated useful life of three years or
21 longer, whether such property is privately or publicly owned, if the Board of Supervisors has
22 provided for the financing of such property in the resolution of formation for the special tax
23 district and the ordinance levying the special taxes in the special tax district.

24 (g) For the development of (i) the 20th Street Historic Buildings (as described in Board of
25 Supervisors Resolution No. 273-14), (ii) the area known as Seawall Lot 349 or Pier 70 (described in

1 Board of Supervisors Resolution No. 401-17), (iii) the project known as the Mission Rock project
2 (described in Board of Supervisors Resolution No. 42-18), and (iv) any previously undeveloped or
3 underutilized area larger than 25 acres that the Board of Supervisors finds could not be developed
4 without private investment to fund initial construction of public utility infrastructure, public access and
5 open space areas, public right-of-ways, and other public amenities, the private developer's costs to
6 establish the regulatory framework governing development in the area and to support the feasibility of
7 special tax or other financing districts, including entitlement costs, if approved in the resolution of
8 formation for the special tax district and the ordinance levying the special taxes in the special tax
9 district.

10 D. Section 43.10.15.1 is hereby added as follows:

11 SEC. 43.10.15.1. DELINQUENT SPECIAL TAXES.

12 In proceedings under this Article to establish a district, and notwithstanding any provision of
13 the Act, the resolution of intention to establish the district may include the following in the case of any
14 special tax levied against any taxable parcel used for private residential purposes to pay for facilities,
15 (1) the maximum special tax that may be levied against such parcel, which shall be specified as a dollar
16 amount that shall be calculated and established not later than the date on which the applicable parcel
17 is first subject to the tax because of its use for private residential purposes, and which amount shall not
18 be increased over time except for increases not to exceed 2 percent per year, (2) a tax year after which
19 no further special tax subject to this sentence shall be levied against or collected from the applicable
20 taxable residential parcel, except that a special tax that was lawfully levied in or before the final tax
21 year and that remains delinquent may be collected in subsequent years, and (3) a statement that under
22 no circumstances will the special tax levied in any fiscal year against any taxable residential parcel
23 subject to this sentence be increased by more than 10 percent of the maximum special tax applicable to
24 the taxable residential parcel because of delinquency or default by the owner of any other parcel within
25 the district. For purposes of this Section, a parcel shall be considered "used for private residential

1 purposes” not later than the date on which an occupancy permit for private residential use is issued.

2 Notwithstanding the above, the district may establish limitations on the increase in the levy of
3 special taxes on non-residential property because of a delinquency or default by the owner of any other
4 parcel within the district provided such limitations are established in the resolution of intention and
5 approved by the qualified electors of the district at the time of formation of the district.

6 Nothing in this Section is intended to or shall prohibit the legislative body from (i) establishing
7 different tax rates for different categories of residential property and non-residential property, (2)
8 changing the dollar amount of the special tax for a taxable residential parcel or taxable non-residential
9 parcel if the size of the residence is increased or if the size or use of the parcel is changed, or (3) using
10 special tax revenues deposited into a reserve fund that is intended to pay for authorized facilities to pay
11 debt service on bonds following delinquencies by property owners in the district.

12 E. Section 43.10.15.2 is hereby added as follows:

13 SEC. 43.10.15.2. PLEDGE AGREEMENTS.

14 A special tax district may enter into an agreement with any third party that pledges to the
15 special tax district funds that will be used to pay for facilities or services that the special tax district is
16 authorized to finance or to pay debt service on bonds or debt issued by or for the special tax district.

17 F. Section 43.10.16 is hereby amended as follows:

18 SEC. 43.10.16. AUTHORIZED SERVICES.

19 (a) In addition to the services that may be financed under the Act, special taxes may
20 be levied to finance the following within ~~San Francisco~~ the City:

21 (i) Recreation program services, library services, maintenance services for
22 elementary and secondary schoolsites and structures, and the operation and maintenance of
23 museums and cultural facilities if they have been approved by the qualified electors,
24 regardless of whether the qualified electors are landowners or registered voters.

25 ///

1 (ii) Any other services that the Board of Supervisors has authorized in the
2 resolution of formation for the special tax district and the ordinance levying the special taxes in
3 the special tax district.

4 (b) It is hereby specifically provided that in proceedings under this Article to finance
5 ~~s~~Services, (i) the services may replace or supplant those provided before the district was formed,
6 despite the limitations in Section 53313, and (ii) the services financed by the district may be provided
7 inside or outside the district the limitations set forth in the penultimate paragraph of Section 53313
8 shall not apply.

9 G. Section 43.10.28 is hereby added as follows:

10 SEC. 43.10.28. ALTERNATE PROVISIONS RELATING TO SPECIAL TAX DISTRICTS
11 ESTABLISHED ON PROPERTY IN THE JURISDICTION OF THE PORT COMMISSION.

12 The following provisions apply to districts established on Port land:

13 (a) Assessor's parcel numbers shall not be required in a landowner election.

14 (b) In the resolution of intention to establish a district, the Board of Supervisors shall fix a
15 time for a public hearing on the establishment of the district that may be more than 60 days after the
16 adoption of the resolution.

17 (c) The Executive Director of the Port Commission shall execute the ballot on behalf of the
18 City whenever the City is a landowner of property within Port Commission jurisdiction.

19 (d) Debt of the district may include an obligation to repay the Port Commission for
20 advances made to pay for authorized costs, the district may execute a promissory note in favor of the
21 Port Commission to evidence such debt, and the maximum term of such debt shall be specified in the
22 Note and shall not exceed the term specified in the Note (if any).

23 (e) To the extent listed in the resolution of formation for the special tax district and the
24 ordinance levying the special taxes in the special tax district, special taxes may be levied and bonds
25 may be issued to finance relocation assistance and costs related to the relocation of displaced tenants

1 and/or residents within the territory of the district, including all the payments required by Chapter 16
2 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code. This
3 displacement shall be deemed to be the result of public action.

4 H. Section 43.10.29 is hereby added as follows:

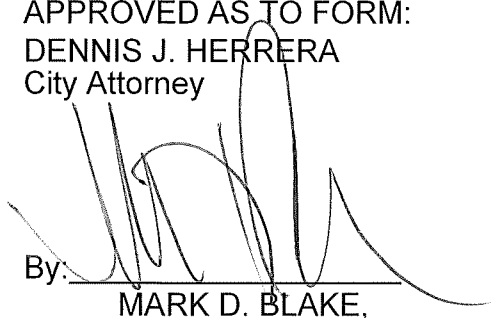
5 SEC. 43.10.29. JOINT COMMUNITY FACILITIES AGREEMENTS OR JOINT EXERCISE OF
6 POWERS AGREEMENT.

7 The City may enter into an agreement described in Section 53316.2 of the Act at any time.

8 Section I. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12 Section J. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
16 additions, and Board amendment deletions in accordance with the "Note" that appears under
17 the official title of the ordinance.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA
21 City Attorney

22
23 By: 
24 MARK D. BLAKE,
25 Deputy City Attorney

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