

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
Sarah Dennis-Phillips, Executive Director, Office of Economic and Workforce Development

FROM: Monique Crayton, Assistant Clerk, Government Audit and Oversight Committee

DATE: February 21, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Safai on February 13, 2024:

File No. 240137

Resolution approving an agreement with a nonprofit Owners' Association for administration/management of the established property-based Community Benefit District known as the Excelsior Community Benefit District, pursuant to the California Streets and Highways Code, Section 36651, for a period effective upon approval of this Resolution, through December 31, 2033.

If you have any 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: monique.crayton@sfgov.org

CC:
Todd Rydstrom, Office of the Controller
Anne Taupier, Office of Economic and Workforce Development
Crezia Tano, Office of Economic and Workforce Development
Alesandra Lozano, Office of Economic and Workforce Development
Marissa Bloom, Office of Economic and Workforce Development

1 [Management Agreement - Owners' Association for Administration/Management -
2 Excelsior Community Benefit District]

3 **Resolution approving an agreement with a nonprofit Owners' Association for**
4 **administration/management of the established property-based Community Benefit**
5 **District known as the Excelsior Community Benefit District, pursuant to the California**
6 **Streets and Highways Code, Section 36651, for a period effective upon approval of this**
7 **Resolution, through December 31, 2033.**

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9 WHEREAS, On July 19, 2023, acting pursuant to Article XIID of the California
10 Constitution, Section 53753 of the California Government Code, and the Property and
11 Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets and
12 Highways Code, commencing with Section 36600), as augmented by Article 15 of the San
13 Francisco Business and Tax Regulations Code, the Board of Supervisors adopted Resolution
14 No. 350-23 ("Resolution to Establish," Board File No. 230515), establishing the property-
15 based Community Benefit District designated as the "Excelsior Community Benefit District"
16 and levying multi-year special assessments on Identified Parcels (as defined in Section
17 53750(g) of the Government Code) included within the District (the "Assessments"); and the
18 Controller's designation for the Assessments for the Excelsior Community Benefit District is
19 Special Assessment No. 104; and

20 WHEREAS, Pursuant to the aforementioned legal authorities and the Resolution to
21 Establish, the Assessments may only be used to fund property-related services,
22 "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and
23 "Activities" (as defined in Section 36606 of the Streets and Highways Code) within the District
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1 in accordance with the Management District Plan (collectively, such authorized services,
2 improvements and activities are referred to here as "District Programs"); and

3 WHEREAS, The District is not a governmental, corporate or separate legal entity, but is
4 a geographic area containing all of the Identified Parcels subject to the Assessments for
5 District Programs described in the Plan and included in the annual budgets submitted to and
6 approved by the Board of Supervisors; the annual budget for District Programs for the first
7 year of operations is set forth in the Plan, and for subsequent years, shall be set forth in the
8 Annual Reports submitted to the Board of Supervisors as required by Section 36650 of the
9 Streets and Highways Code; and

10 WHEREAS, Pursuant to the Resolution to Establish and Sections 36612 and 36650 of
11 the Streets and Highways Code, the Board of Supervisors may contract with a private
12 nonprofit entity referred to as an "Owners' Association" to administer the District Programs.
13 An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity.
14 An Owners' Association is a private entity and may not be considered a public entity for any
15 purpose, nor may its board members or staff be considered to be public officials for any
16 purpose; provided, however, that an Owner's Association must comply with the Ralph M.
17 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
18 Government Code) at all times when its board of directors or any committee thereof hears,
19 considers or deliberates on matters concerning the District, and must comply with the
20 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
21 Title 1 of the Government Code) for purposes of providing public access to records relating to
22 the District; and

23 WHEREAS, An Owners' Association is obligated to hold in trust all funds it receives
24 from the City that are derived from the City's levy and collection of the Assessments, and to
25 use such funds exclusively for the purposes of implementing the Management District Plan

1 and administering, managing and providing District Programs set forth in the Plan, Resolution
2 to Establish, and annual budgets submitted by the Owners' Association and approved by the
3 Board of Supervisors; and

4 WHEREAS, Pursuant to the Resolution to Establish, the Office of Economic and
5 Workforce Development is the City agency responsible for coordination between the City and
6 the Owners' Association for the District; and

7 WHEREAS, The Office of Economic and Workforce Development has negotiated an
8 agreement with a California nonprofit corporation, dba "Excelsior Action Group," to serve as
9 the Owners' Association for the District, in which role the Excelsior Action Group shall
10 develop, implement, direct, manage, administer, operate and ensure the timely provision of
11 the District Programs ("Management Agreement" or "Agreement"). The Management
12 Agreement is on file with the Clerk of the Board of Supervisors in File No. _____,
13 which is hereby declared to be a part of this Resolution as if set forth fully herein; and

14 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
15 the Resolution to Establish and the express terms of the Management Agreement, the
16 Agreement shall not be binding unless the Board of Supervisors approves the Agreement;
17 and

18 WHEREAS, It is in the best interest of the City and the property owners within the
19 District for the City to enter into the Management Agreement with the Excelsior Action Group
20 according to the terms and conditions set forth therein; and

21 WHEREAS, The Planning Department has determined that the actions contemplated in
22 this Resolution comply with the California Environmental Quality Act (California Public
23 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
24 Board of Supervisors in File No. _____ and is incorporated herein by reference;
25 now, therefore, be it

1 RESOLVED, That the Board of Supervisors declares as follows:

2 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Office of Economic
3 and Workforce Development is duly authorized to execute the Management Agreement on
4 behalf of the City and County of San Francisco.

5 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
6 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
7 File No. _____, which is hereby declared to be a part of this Resolution as if set
8 forth fully herein.

9 Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
10 The Office of Economic and Workforce Development, Controller and all other Departments,
11 City Officers and Employees are authorized to take all actions, make determinations, exercise
12 discretion, grant or deny approval, and otherwise take all reasonable steps necessary for full
13 performance of the Management Agreement on behalf of the City and County of San
14 Francisco according to its terms.

15 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
16 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
17 Board, the Office of Economic and Workforce Development may execute amendments to the
18 Agreement on behalf of the City and County of San Francisco that are consistent with the
19 Management District Plan, Resolution to Establish, official City policies and applicable law.

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