CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: November 29, 2023 Budget and Finance Committee Meeting

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Item 1 **File 23-1082**	**Departments:** Children, Youth, & Families Human Rights Commission

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would de-appropriate $250,000 from General City Responsibility and $20,000 from the Department of Children, Youth, and Families and re-appropriate the funds to the Human Rights Commission.

Key Points

- The proposed $270,000 funding would be used for training and violence prevention events in Supervisorial District 10. One or more non-profits may provide services.

Fiscal Impact

- The proposed ordinance re-appropriates funding assigned to District 10 projects.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

BACKGROUND

The proposed $270,000 funding would be used for training and violence prevention events in Supervisorial District 10. One or more non-profits may provide services.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would de-appropriate project funding for Supervisorial District 10, including: $250,000 from General City Responsibility and $20,000 from the Department of Children, Youth, and Families and re-appropriate the funds to the Human Rights Commission for projects in District 10.

Exhibit 1: Summary of Appropriation Changes

Sources		Projects
General City Responsibility	($250,000)	District 10 Projects
Children, Youth, & Families	($20,000)	District 10 Projects
Total, De-appropriation	**($270,000)**	
Uses		
Human Rights Commission	$270,000	Trainings and violence prevention in District 10
Total, Uses	**$270,000**	

Source: Proposed Ordinance

FISCAL IMPACT

The proposed ordinance re-appropriates funding assigned to District 10 projects.

RECOMMENDATION

Approve the proposed ordinance.

Item 5 **File 23-1154**	**Department:** City Administrator (ADM)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Modification No. 3 to the contract between the City and Golden Gate Petroleum, increasing the not-to-exceed (NTE) amount from $68,000,000 to $86,750,000, and extending the term by five months, from May 31, 2024 to October 31, 2024 for a total contract term of five years and five months.

Key Points

- In 2019, the Board approved an initial two-year and ten-month agreement with Golden Gate Petroleum to deliver renewable diesel to Central Shops fueling stations and other Departments. The contract has been amended twice. The City is not obligated to purchase any specific quantity of diesel. The price the City pays for renewable diesel is based on a fixed markup or markdown (depending on the quantity delivered) from the daily price per gallon of renewable diesel.
- Although the term of the current contract does not end until May 2024, the current contract not-to-exceed amount is nearly depleted. Average spending on the contract has nearly doubled from $967,711 in FY 2019-20 to $1.7 million in the first four months of FY 2023-24. This is driven primarily by an increase in diesel prices during that period. The proposed not-to-exceed $86,750,000 covers 12 months of usage, from November 1, 2023 through October 31, 2024, with a 20 percent contingency to cover increases in pricing.
- In addition, OCA has proposed to amend the agreement to extend the term by an additional five months to allow the diesel contract term to coincide with the contract term of the City's gasoline contract. This would allow OCA to re-solicit for both gasoline and diesel fuel under one large procurement. According to OCA, this could result in contract and vendor management efficiencies, as well as likely yielding cost-savings through the larger combined fuel contract.

Fiscal Impact

- Fuel purchases are paid from each department's budget. General Fund Departments account for 17.3 percent of the spending to date on the agreement, and the remaining 82.7 percent is paid from enterprise revenues.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board, or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

In December 2018, the City's Office of Contract Administration (OCA) solicited competitive bids for renewable diesel[1] for all City departments and received responses from two suppliers.

OCA awarded the primary contract (Contract ID 1000013880) to the lowest bidder, Golden Gate Petroleum, for an initial not to exceed (NTE) amount of $45,000,000 and a term of two years and ten months, from June 1, 2019 through March 31, 2022 (File 19-0334)[2]. The contract has been amended twice, including extension of the term through May 31, 2024 and an increase of the not to exceed amount to $68,000,000, as summarized below in Exhibit 1.

Exhibit 1. Modification History to City Gasoline Contract (Contract ID No. 1000013880)

Modification	Start Date	End Date	NTE Amount	Changes
Original Contract	06/01/19	05/31/22	$45,000,000	
No. 1		No Change	$45,000,000	Emergency delivery provision
No. 2		05/31/24	$68,000,000	Extend Term, Increase NTE Amount
No. 3 (proposed)		*10/31/24*	*$86,750,000*	*Extend Term, Increase NTE Amount*

Source: OCA

Note: Modification No.1 added a clause specifying fuel prices and acceptable delivery delays in the event of an emergency.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Modification No. 3 to the contract between the City and Golden Gate Petroleum (Contract No. 1000013880), increasing the not-to-exceed amount by $18,750,000, from $68,000,000 to $86,750,000, and extending the term by five months, from May 31, 2024 to October 31, 2024 for a total contract term of five years and five months, from June 01, 2019 through October 31, 2024.

Under the original agreement, the maximum contract period is not to exceed five years. The proposed five-month extension would allow the diesel contract term to coincide with the

[1] Renewable diesel is produced by from cooking oil and other vegetable or animal fats that is blended with petroleum diesel but in a higher concentration than traditional biodiesel. The contract also provides for red dye diesel which is petroleum-based diesel that is intended for use in offroad vehicles.

[2] The resolution in File 19-0334 stated that the initial contract term would be three years from April 2019 through March 2022, but the contract as executed by OCA did not take effect until June 2019.

contract term of the City's gasoline contract.[3] This would allow OCA to re-solicit for both gasoline and diesel fuel under one large procurement. According to OCA, this could result in contract and vendor management efficiencies, as well as likely yielding cost-savings through the larger combined fuel contract.

Services

Under the five-month contract extension, Golden Gate Petroleum would continue delivering renewable diesel fuel to Central Shops fueling stations, the San Francisco Municipal Transportation Agency, San Francisco Fire Department, and to the San Francisco Public Utilities Commission's East Bay locations, Peninsula locations, and PUC Sierra locations. The fuel will be used by departments throughout the City. The City is not obligated to purchase any specific quantity of diesel. The price the City pays for renewable diesel is based on a fixed markup or markdown (depending on the quantity delivered) from the daily price per gallon of renewable diesel, as published by the industry group known as the Oil Price Information Services (OPIS). While the markup or markdown price remains fixed, the OPIS price per gallon fluctuates daily. The price also depends on the diesel type, delivery location, and gallons ordered.

Performance

The contract requires Golden Gate Petroleum to pre-schedule all deliveries to City sites, provide emergency deliveries at no additional cost, and include ordering information on packing slips for each delivery. Golden Gate Petroleum is required to pay for an annual third-party audit of Renewable Diesel deliveries to the City. OCA does not monitor contractor performance.

OCA reports that the City's Central Shops samples tanks at least once per year and sends results to a laboratory outside of the City. There have not been any issues with noncompliance with State or local fuel standards.

Contract Expenditures

Although the term of the current contract does not end until May 2024, the current contract not-to-exceed amount is nearly depleted. As of November 21, 2023, the City had spent $65,880,603 on this contract. There remains $2,119,397 in the contract spending authority (excluding encumbrances), with approximately six months (December 1, 2023-May 31, 2024) remaining in the prior contract term. In 2022, expenditures from December through May were $8.7 million. Without Modification No. 3, the prior contract term would have ended on May 31, 2024, and OCA projected, based on purchase orders submitted, that the current contract not-to-exceed amount of $68,000,000 would be surpassed before then.

As shown in Exhibit 2 below, average spending on the contract has nearly doubled from $967,711 in FY 2019-20 to $1.7 million in the first four months of FY 2023-24. This is driven primarily by an increase in diesel prices during that period.

[3] The Board approved an extension of the City's prior gasoline contract in November 2023 through November 19, 2023 (File 23-1037). Following a competitive solicitation, OCA entered into a successor agreement with Mansfield Oil with a term through November 2024.

Exhibit 2 below summarizes the total expenditures on the City's contract with Golden Gate Petroleum.

Exhibit 2: Golden Gate Petroleum Fuel Contract Total Expenditures by Department, FY 2018-19-FY 2023-24*

Dept	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total	%
Airport	43,190	204,199	182,864	348,123	354,427	95,379	1,228,182	1.9%
MTA	39,248	9,062,478	8,012,905	13,179,223	14,561,247	6,228,199	51,083,299	77.5%
PUC	15,663	380,134	360,486	579,790	594,864	274,138	2,205,075	3.3%
Enterprise Subtotal	**98,100**	**9,646,811**	**8,556,256**	**14,107,136**	**15,510,538**	**6,597,715**	**54,516,555**	**82.7%**
City Administrator	132,569	1,344,690	1,277,524	2,173,579	2,050,500	733,441	7,712,304	11.7%
Public Health	0	36,222	27,828	4,088	73,165	0	141,303	0.2%
Fire	3,438	538,302	524,235	902,110	1,004,081	324,603	3,296,769	5.0%
Recreation & Parks	0	46,505	31,590	48,542	65,631	$18,949	211,216	0.3%
Juvenile Probation	0	0	2,456	0	0	0	2,456	0.0%
General Fund Subtotal	**136,008**	**1,965,719**	**1,863,633**	**3,128,318**	**3,193,377**	**1,076,993**	**11,364,047**	17.3%
Total	**234,108**	**11,612,529**	**10,419,888**	**17,235,454**	**18,703,915**	**7,674,708**	**65,880,603**	100.0%
Avg./Month	117,054	967,711	868,324	1,436,288	1,558,660	1,705,491		

Source: OCA

Notes: Expenditure data is from June 1, 2019 to November 1, 2023. This is not representative of all the City's fuel spending, which is spread among multiple contracts.

The San Francisco Municipal Transportation Agency (MTA) accounts for a majority ($51,083,299, or 77.5 percent) of contract expenditures. The General Fund Department with the largest contract expenditures is the City Administrator's Fleet Management Division (FMD) ($7,712,304 or 11.7%). FMD purchases gasoline and diesel from the citywide contracts to supply three City-owned and operated gas stations and one emergency tanker truck that resides at Central Shops and is used to fuel diesel trucks (such as fire trucks) during an emergency.

The Fleet Management Division, which accounts for a majority but not all General Fund expenditures on fuel, has a fuel budget of approximately $7.6 million in FY 2023-24 for gasoline, diesel, and propane. The Fire Department has the second highest contract expenditures amongst General Fund Departments ($329,769 or 5%). Fire uses diesel to fuel fire engines and trucks and has 20 fuel tank locations throughout the City and on Treasure Island for refueling purposes.

FISCAL IMPACT

The Office of Contract Administration projects total contract spending of $86.7 million, as shown below in Exhibit 3. The proposed not-to-exceed $86,750,000 covers 12 months of usage, from

November 1, 2023 through October 31, 2024, with a 20 percent contingency to cover increases in pricing.

Exhibit 3: Projected Spending

Current Agreement	68,000,000
Projected Spending	$15,600,000
Contingency (20%)	$3,120,000
Total Projected Spending	$88,720,000
Not To Exceed (Rounded)	**$86,750,000**

Source: BLA analysis of actual spending data.

Notes: Projected spending is based on the average monthly spend over the lifetime of the contract, approximately $1.3 million per month. A contingency of 20% is reasonable given the volatility of fuel prices. If the spending continues at its current spend rate ($1.7 million per month), we estimate total spending of $88.5 million, which is higher than the proposed not-to-exceed amount.

Funding Sources

Funding for the proposed amendment was included in the FY 2023-24 adopted budgets of the City departments that use diesel, as previously appropriated by the Board of Supervisors. As shown above, General Fund departments' contract expenditures over the past approximately five years (from June 1, 2019 through November 1, 2023) account for $11,364,047 out of the total spend amount of $65,880,603, or 17.3 percent.

Three enterprise departments utilize the fuel from the City's contract with Golden Gate Petroleum: San Francisco Public Utilities Commission (PUC), San Francisco International Airport (AIR), and the San Francisco Municipal Transportation Agency (MTA). Enterprise revenues pay for these departments' contract expenditures of $54,516,555.

RECOMMENDATION

Approve the proposed resolution.

Item 7 File 23-1152	Department: Public Health (DPH)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize a first amendment to the Department of Public Health's agreement with Chinese Hospital Association exercising the first one-year term extension option for a new total term from December 1, 2022 to November 30, 2024, and increasing the not-to-exceed amount $9,891,840 to $18,851,840.

Key Points

- Following a competitive solicitation, In December 2022, DPH entered into a contract with Chinese Hospital for a one-year initial term from December 1, 2022 to November 30, 2023, and a not-to-exceed amount of $9,891,840. The original agreement provided eight one-year term extension options.
- The proposed first amendment would not make any changes to the contracted services, which include (1) surge capacity for subacute and skilled nursing beds for patients exiting San Francisco General Hospital and (2) subacute skilled nursing beds. The contract allows the City to purchase up to 23 beds per day from Chinese Hospital at a cost of $1,350 per bed day. The City only pays for occupied beds and only for San Francisco residents. The subacute skilled nursing unit is not yet certified by the state, so no services have been provided in this category.

Fiscal Impact

- Over the term of the current agreement, actual expenditures of $10.3 million are projected to exceed the $9.9 million contract not-to-exceed amount by approximately $400,000. DPH is requesting an amendment to the proposed resolution to increase the not-to-exceed amount from $18,851,480 to $20,638,800 to account for the over billing and also account for a potential delay in Center for Medicare and Medicaid Services (CMS) certification.
- The proposed first amendment would be funded entirely by the General Fund. However, once Chinese Hospital is CMS certified, this cost will be partially offset by Medicare and Medi-Cal billing.

Recommendations

- Approve the Department of Public Health's request to increase the proposed resolution's not-to-exceed amount from $18,851,840 to $20,638,800.
- Approve the proposed resolution, as amended.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Chinese Hospital

Chinese Hospital is an acute care hospital located at 845 Jackson Street in Chinatown. The Chinese Hospital is a nonprofit organization governed by a voluntary board of trustees.

Prior Contract with Chinese Hospital

In February 2022, the Board approved the first amendment to a Department of Public Health (DPH) contract with Chinese Hospital to provide skilled nursing bed capacity for patients exiting General Hospital during COVID surges. The agreement required the City pay for a minimum of 13 beds per month and was procured under the Mayor's emergency orders related to COVID response. Because of the minimum required purchase and high cost of the service, we recommended DPH undertake a competitive solicitation for skilled nursing bed overflow.

Procurement Process

On May 13, 2022, DPH issued a request for proposals (RFP) (No. 6954) to identify providers within San Francisco with the capacity to provide (1) subacute skilled nursing care and (2) Surge/emergency skilled nursing care. A panel[1] reviewed the submissions from the two respondents to the RFP, and both were selected as providers. According to DPH, contract negotiations with the second provider are ongoing.

In December 2022, DPH entered into a contract with Chinese Hospital for a one-year initial term from December 1, 2022 through November 30, 2023, and a not-to-exceed amount of $9,891,840. The original agreement also provided for eight one-year options to extend the agreement.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first amendment to the agreement between the San Francisco Department of Public Health (DPH) and the Chinese Hospital Association (Chinese Hospital), exercising the first one-year term extension option for a new total term from December 1, 2022 to November 30, 2024, and increasing the not-to-exceed amount from

[1] The four panelists included a Program Director, Director of Department of Care Coordination, Director of Patient Accounting, and a Program Analyst.

$9,891,840 to $18,851,840. Following the approval of the proposed first amendment, seven one-year term extension options would remain.

As discussed below, DPH is requesting that the resolution be amended to increase the not-to-exceed amount from $18,851,840 to $20,638,800, due to an error in the contract utilization calculations.

Services

The proposed first amendment would not make any changes to the contracted services, which includes (1) surge capacity for subacute and skilled nursing beds for patients exiting San Francisco General Hospital and (2) subacute skilled nursing beds. The contract allows the City to purchase up to 23 beds per day from Chinese Hospital; the City only pays for occupied beds and only for San Francisco residents.

Skilled Nursing Care includes 24/7 patient supervision, physical, occupational and speech therapy, wound care, intravenous therapy, injections, monitoring of vital signs, and assistance with daily activities.

Subacute Skilled Nursing Care refers to ongoing, complex nursing care post-hospitalization, such as tracheotomy care, complex wound management, intravenous tube feeding, and/or ventilator care after an acute hospitalization.

Chinese Hospital has been accepting contracted patients into their acute beds, who are then treated at skilled nursing care.

Certification Issues

According to DPH, the Chinese Hospital unit was certified as a Skilled Nursing Facility on June 1, 2023 and is in the process of obtaining certification from the Center for Medicare and Medicaid Services (CMS) in order to bill those programs.

Chinese Hospital's subacute skilled nursing unit is not yet certified by the California Department of Health Care Services, so no services have been provided in this category of care. According to DPH, Chinese Hospital will apply for subacute certification from the California Department of Public Health after the Hospital obtains Centers for Medicare and Medicaid Services (CMS) certification. However, that will take longer than a year, and so this service is not expected to be provided during the proposed extension term.

Subacute and Skilled Nursing Facility Beds during a Surge or Emergency

According to DPH, since December 2021, Laguna Honda Hospital has not admitted non-acute patients following hospitalization, and Chinese Hospital has been receiving patients from San Francisco General Hospital to help address the gap. To ensure that acute care beds are available at a sufficient capacity at San Francisco General Hospital during surges and emergencies, non-acute patients may be discharged to skilled nursing care at Chinese Hospital.

Service Utilization

DPH provided Skilled Nursing Facility daily bed utilization data on the first 48-weeks (December 1, 2022 - November 6, 2023) of the initial contract term. During this period, Chinese Hospital had an average occupancy rate of 20 beds per week, out its total possible capacity of 23 (89 percent). The lowest weekly census occurred in March 2023, with 16 patients (69 percent).

Exhibit 1. Skilled Nursing Facility Beds Provided, December 1, 2022 – November 6, 2023

	Contracted	Actual	Percent Provided
Skilled Nursing Beds	1,104	988	89%

Source: DPH

Note: The first term of the original agreement is from Dec. 1 2022 - Nov. 30, 2023, but only the first 48 weeks of data were available as of the drafting of this report.

Performance Monitoring

According to DPH, there is no formal performance evaluation like what is conducted annually for lower levels of community-based care, such as outpatient services. In this level of care, there is a weekly Utilization Management and Utilization Review meeting between DPH and Chinese Hospital staff to ensure that each client is receiving the appropriate level of care according to their treatment plans and emergent needs. According to DPH, State regulations specify that skilled nursing facilities are required to provide a minimum of 3.2 hours of nursing care per resident per day, however Chinese Hospital was not certified by state authorities as a skilled nurse facility until June 2023. DPH staff note that the Care Coordination and Medical Team at San Francisco General Hospital meet weekly with Chinese Hospital staff to review referrals, utilization management, and discuss patient stays and discharge plans. Attachment 1 to Appendix A of the original agreement includes a requirement to track whether the number of beds provided by Chinese Hospital is equal to the agreed upon number (up to 23 beds).

FISCAL IMPACT

Exhibit 2 below summarizes actual and projected contract expenditures for surge skilled nursing beds.

Exhibit 2: Actual and Projected Expenditures

Current Agreement	$9,891,840
11/1/23 – 11/30/23 Overspending	427,560
Proposed New Spending	$8,832,000
Contingency	$1,487,400
Revised Not To Exceed Amount	**$20,638,800**

Source: DPH

Over the initial term of the agreement, actual expenditures of $10.3 million are projected to exceed the $9.9 million contract not-to-exceed (NTE) amount by approximately $400,000. DPH is requesting an amendment to the proposed resolution to increase the not-to-exceed amount from $18,851,480 to $20,638,800 to account for the over billing and also account for a potential delay in CMS certification, discussed below.[2]

Bed Rate Change Contingent on CMS Certification

Under the existing contract, Skilled Nursing and Subacute Skilled Nursing beds cost $1,350 per day. This cost is based on acute care nursing beds, for which Chinese Hospital has a certification.

According to DPH, Chinese Hospital is planning to apply for Centers for Medicare and Medicaid Services (CMS) certification in December 2023. Until Chinese Hospital receives CMS certification from the California Department of Health Care Services, the skilled nursing facility bed rate is $1,350 per day. Following CMS certification, Chinese Hospital will be able to bill Medicaid and Medi-Cal, and the City's bed rate will be reduced to $500 per day to account for the insurance revenue. DPH anticipates it will take 8 months for certification after the CMS certification application is submitted. DPH expected the process would take eight months last year, in December 2022, when the original agreement commenced, but they were delayed by state approval of the skilled nursing facility certification. Projected spending for the proposed first amendment incorporates the maximum projected amount in case there is no rate change from $1,350 per day.

Benchmark Costs

In our 2022 report on the prior version of this agreement, we noted the Chinese Hospital bed rate in that contract, $1,369 per bed per day, was based on acute care bed costs because the facility was certified by state authorities to provide acute care, not skilled nursing care, which is less expensive. At that time, we noted skilled nursing facility daily bed rates at Laguna Honda were $871 and Medi-Cal daily bed rates for skilled nursing were $758. While the proposed contract is an improvement in that it does not contain a minimum purchase provision, it appears that the City is still paying more than the typical cost of a skilled nursing bed in the proposed contract.

According to DPH staff, the cost of acute care beds at General Hospital is $3,500 per day, so transferring patients to $1,350 skilled nursing beds at Chinese Hospital provides savings to General Hospital, where clinically appropriate, and ensures that these beds are available to those needing this level of care.

Funding Source

As was the case for the first term of the contract, the first amendment to the agreement would be funded entirely by the San Francisco General Fund. However, once Chinese Hospital is CMS certified, this cost will be partially offset by Medicare and Medi-Cal billing. Unlike the prior version of the contract, which was for COVID surge capacity, this contract's costs are not eligible for FEMA reimbursement.

[2] The proposed resolution's original not-to-exceed amount assumed the contract has been underspent.

RECOMMENDATIONS

1. Approve the Department of Public Health's request to increase the proposed resolution's not-to-exceed amount from $18,851,840 to $20,638,800.
2. Approve the proposed resolution, as amended.

Item 8 File 23-1160	Department: Department of Public Health (DPH)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would de-appropriate $39,500,000 from permanent salaries and dependent coverage fringe benefits and appropriate $39,500,000 to overtime in the Department of Public Health's (DPH) FY 2023-24 budget.

Key Points

- As of October 27, 2023, DPH has expended approximately 59 percent of its overtime budget for FY 2023-24. DPH anticipates that it will exceed its overtime budget in the San Francisco General Hospital (SFGH) and Laguna Honda Hospital (LHH) operating funds on approximately January 5, 2024 and in the General Fund on approximately April 12, 2024.
- High overtime needs are largely driven by vacancies, increased turnover, and minimum staffing levels to support patients. DPH reports that while it has been filling vacant positions, many vacancies are filled through internal promotions or reassignments requested by existing employees, which do not increase overall headcount. DPH has also struggled to keep up with staff departures.

Fiscal Impact

- The proposed ordinance would increase the DPH FY 2023-24 overtime budget by $39,500,000, or 123 percent over the budgeted amount of $32,109,441. This amount is based on actual overtime expenditures of $19,045,960 through October 27, 2023, or approximately $2,221,368 per pay period. Over the remainder of the fiscal year, DPH estimates that it will spend approximately $59.4 million in overtime. Overtime costs would be funded by the proposed reallocation of vacancy savings.

Policy Consideration

- The fact that overtime spending is projected to be over 123 percent above budget may reflect a lack of internal controls over overtime use. Administrative Code Chapter 18.13-1 states that City staff should not work overtime hours that exceed 25 percent of their regular hours (typically 520 overtime hours per year), yet we project 350 DPH staff (5 percent of total DPH staff) will exceed that threshold. The Department is in the process of requesting exemptions from the Department of Human Resources for the 16 staff who have already exceeded 520 overtime hours this fiscal year.
- To avoid future supplemental appropriation requests, the Board of Supervisors may consider requesting DPH and the Mayor's Budget Office to more accurately forecast its overtime needs in the upcoming FY 2024-26 two-year budget.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT

Charter Section 9.105 provides that amendments to the Annual Appropriation Ordinance be subject to Board of Supervisors approval by ordinance, after the Controller certifies the availability of funds.

Administrative Code Section 3.17 states that the Airport, Department of Emergency Management, Fire Department, Police Department, Department of Public Health, Public Utilities Commission, Department of Public Works, Recreation and Park Department, and Sheriff must obtain a supplemental appropriation to exceed the overtime budgets in their annual operating funds.

BACKGROUND

The Department of Public Health (DPH) is requesting a supplemental appropriation to increase its overtime budget in annual operating funds, as per Administrative Code Section 3.17. The need for additional overtime funds is due to vacancies, increased turnover, and minimum staffing levels to support patients.

As of October 27, 2023, DPH has expended approximately 59 percent of its overtime budget for FY 2023-24. DPH anticipates that it will exceed its overtime budget in the San Francisco General Hospital (SFGH) and Laguna Honda Hospital (LHH) operating funds on approximately January 5, 2024 and in the General Fund on approximately April 12, 2024.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would de-appropriate $39,500,000 from permanent salaries and dependent coverage fringe benefits and appropriate $39,500,000 to overtime in the DPH FY 2023-24 budget. Approval of this ordinance would not result in an increase in overall appropriation for the department.

The proposed de-appropriation and appropriation of funds are shown in Exhibit 1 below.

Exhibit 1: Proposed De-Appropriation and Appropriation of Funds

Sources	General Fund	SFGH Operating Fund	LHH Operating Fund	Total
Permanent Salaries	$1,725,000	$16,550,000	$15,225,000	$33,500,000
Dependent Coverage		6,000,000		6,000,000
Total Sources	**$1,725,000**	**$22,550,000**	**$15,225,000**	**$39,500,000**

Uses	General Fund	SFGH Operating Fund	LHH Operating Fund	Total
Overtime	$1,725,000	$22,550,000	$15,225,000	$39,500,000
Total Uses	**$1,725,000**	**$22,550,000**	**$15,225,000**	**$39,500,000**

Source: Proposed ordinance

FISCAL IMPACT

The proposed ordinance would increase the DPH FY 2023-24 overtime budget by $39,500,000, or 123 percent over the budgeted amount of $32,109,441. This amount is based on actual overtime expenditures of $19,045,960 through October 27, 2023, or approximately $2,221,368 per pay period. Over the remainder of the fiscal year, DPH estimates that it will spend approximately $59.4 million in overtime. Actual and projected overtime expenditures by fund are shown in Exhibit 2 below.

Exhibit 2: Actual and Projected Overtime Expenditures by Fund

Fund	FY 2023-24 Overtime Budget	Actual Overtime Expenditures (through 10/27/23)	Total Projected FY 2023-24 Expenditures (with 10% Buffer)[1]	Additional Amount Needed
General Fund	$3,711,500	$1,337,872	$5,243,035	$1,531,535
SFGH Operating Fund	16,622,210	10,956,618	39,395,793	22,773,583
LHH Operating Fund	11,775,731	6,751,470	26,769,316	14,993,585
Total	**$32,109,441**	**$19,045,960**	**$71,408,144**	**$39,298,703**

Source: DPH

As noted above, high overtime needs are largely driven by vacancies, increased turnover, and minimum staffing levels to support patients. According to DPH, the department is in a unique situation in the current year for two reasons. First, at LHH, the need is driven by additional staff training, work to prepare for recertification, and increased turnover and leadership transitions. Second, SFGH has experienced higher than anticipated patient levels, which increases the need for positions such as nurses, porters, and food service workers. DPH reports that while it has been filling vacant positions, many vacancies are filled through internal promotions or reassignments requested by existing employees, which do not increase overall headcount. DPH has also struggled to keep up with staff departures, which is an issue across all areas of the healthcare industry. The classifications with the highest overtime utilization and the vacancy rates for those classifications are shown in Exhibit 3 below.

[1] DPH has included a 15 percent buffer for LHH operating fund overtime to ensure while it still awaits recertification and 10 percent for the remainder of the divisions to adjust for seasonal fluctuations, for an average of 12 percent overall.

Exhibit 3: DPH Classifications with Largest Overtime Expenditures and Vacancies

Classification	Authorized Positions	Vacancies (as of 10/24/23)	Percent Vacant (as of 10/24/23)	Year to Date Overtime Expenditures (as of 10/24/23)
2320 Registered Nurse	1,508	205	14%	$4,683,878
2303 Certified Nursing Assistant	552	37	7%	2,569,042
P103 Special Nurse[2]	n/a	n/a	n/a	1,969,640
2736 Porter	337	21	6%	1,724,198
2312 Licensed Vocational Nurse	198	35	18%	823,722
2322 Nurse Manager	104	22	21%	695,772
2604 Food Service Worker	121	11	9%	685,826
2328 Nurse Practitioner	165	20	12%	577,978
2430 Medical Evaluations Assistant	257	34	13%	426,814
2903 Hospital Eligibility Worker	234	51	22%	423,890
7334 Stationary Engineer	52	16	31%	339,019
2302 Nursing Assistant	107	14	13%	302,739
2471 Radiologic Tech I, II, III	79	11	14%	270,827
2409 Pharmacy Technician	90	8	9%	251,490
2330 Anesthetist	13	2	14%	202,755

Source: DPH. Full-time equivalent (FTE) positions are rounded to the nearest position.

In total, DPH has 1,700 vacancies out of 8,370 authorized full-time equivalent positions, or a 20 percent vacancy rate (as of October 24, 2023). However, there is only budget authority for approximately 10 percent of these vacancies given budgeted attrition savings for FY 2023-24, so roughly 850 of these vacant positions can be filled for the Department to stay within its budget.

POLICY CONSIDERATION

Internal Controls for Overtime

The fact that overtime spending is projected to be 123 percent above budget may reflect a lack of internal controls over overtime use. While certain hospital operations have minimum staffing requirements set by state agencies, other overtime spending is discretionary and likely unnecessary. Administrative Code Chapter 18.13-1 states that City staff should not work overtime hours that exceed 25 percent of their regular hours (typically 520 overtime hours per year). According to overtime spending data provided by DPH, as of October 27, 2023, 16 positions had already exceeded 520 hours of overtime, and DPH reports that it is requesting exemptions for these positions. Using a straight-line projection from this data, we estimate an additional 350 DPH positions would incur more than 520 hours of overtime, amounting to approximately five

[2] All P103 position appointments are as needed to backfill paid time off, 2320 Registered Nurse vacancies, and staff for increased patient census. Therefore, there are no P103 vacancies.

percent of all DPH staff incurring more overtime than is allowed by local law. This number would be lower to the extent that positions experience turnover and therefore occupied by more than one person.

Budget Practices

In FY 2022-23, DPH initially had an overtime budget of $25,660,412, but requested a supplemental appropriation of an additional $30,700,000 for overtime (File 23-0257). This amounted to a 120 percent increase in the Department's overtime budget. Despite this large increase and ongoing high vacancy rate, DPH's FY 2023-24 budget only included $32,109,441 in overtime. DPH is now requesting a supplemental appropriation of $39,500,000, which is a 123 percent increase in its overtime budget. To avoid future supplemental appropriation requests, the Board of Supervisors may consider requesting DPH and the Mayor's Budget Office to more accurately forecast its overtime needs in the upcoming FY 2024-26 two-year budget.

RECOMMENDATION

Approve the proposed ordinance.

Item 9 File 23-1198	Department: Mayor Office of Housing & Community Development (MOHCD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution approves a $24 million loan to 1234 Great Highway, LLC, an affiliate of the Tenderloin Neighborhood Development Corporation (TNDC), to finance the acquisition of 1234, 1270, and 1280 Great Highway for senior affordable housing development and to provide funding for predevelopment costs.

Key Points

- The Mayor's Office of Housing and Community Development (MOHCD) issued an amended Notice of Funding Availability (NOFA) in May 2023 that made $66.6 million available for the acquisition and predevelopment of new affordable rental housing for low-income families and homeless households.
- MOHCD awarded $24 million to TNDC for the development of a 216-unit apartment building that will provide rental housing affordable for low-income and formerly homeless seniors. The building will also contain an adult day health care center to be operated by Self Help for the Elderly (SHE).
- The site has been acquired by TNDC using an acquisition loan from the Housing Accelerator Fund (HAF). $23,348,500 of the proposed $24 Million loan will be used to refund the HAF loan and for associated closing costs. The remaining $651,500 of the proposed loan will be used for predevelopment costs such as architectural design expenses, engineering and environmental studies, and developer fees.

Fiscal Impact

- The acquisition portion of the loan will not accrue any interest and may be forgiven upon transfer of the property to the City.
- The predevelopment portion of the loan amount will be charged simple interest at a rate of three percent per annum, although the loan agreement allows the MOHCD Director to reduce the interest rate to as low as zero percent in order to make the Project financially feasible.
- The proposed $24 million loan is funded by Low and Moderate Income Housing Asset Funds ($4,047,507) and 2023 Certificates of Participation Funds ($19,952,493).

Recommendations

- Amend the proposed legislation to state that it is the City's intent to enter into a purchase and sales agreement in the future at the closing of the construction loan, in which the City will take ownership of the land at 1234 Great Highway and enter into a ground lease for the land with 1234 Great Highway, LLC.
- Approve the proposed resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

The Mayor's Office of Housing and Community Development (MOHCD) serves as the successor housing agency of the San Francisco Redevelopment Agency and, as required, created a fund called the Low and Moderate Income Housing Asset Fund (LMIH Asset Fund). Additionally, on June 2, 2023 the City enacted Ordinance 102-23 which provided for the issuance of up to $146,800,000 in Certificates of Participation (2023 COP Funds) to finance and refinance certain capital improvement, affordable housing, and community facilities development projects, including site acquisition, site preparation, design work, and other related expenses.

MOHCD issued a Multi-site Acquisition and Predevelopment Notice of Funding Availability (NOFA) in January 2023 for up to $40 million in 2023 COP Funds for the acquisition and predevelopment for new affordable rental housing for low-income families and homeless households. The NOFA stated that MOHCD intended to provide 25 to 50 percent of total funding to sites located in California Debt Limit Allocation Committee (CDLAC)-defined "High/Highest-resource" areas (which includes economic, environmental, and education factors associated with positive outcomes for low-income households, particularly children) and provide remaining funding to sites in Priority Equity Geographies[1] as defined in the Housing Element. Additionally, the following goals were established in conjunction with the NOFA:

- Construction to start in December 2026
- Interim Use of the site through construction start in December 2026
- Maximized density
- City subsidy of no more than $350,000 per unit including acquisition costs
- At least 25 percent of units for households experiencing homelessness, subsidized by the City's Local Operating Subsidy Program (LOSP)
- At least 30 percent of units for extremely low-income households, which may include homeless households
- Alignment with MOHCD racial equity goals

Proposals were due April 7, 2023 and were evaluated by four MOHCD staff and one staff person from Department of Homelessness and Supportive Housing (HSH) based on experience (40 points) and project attributes, which include program, community engagement strategy, service delivery, financing and cost containment, and racial equity strategy (together 60 points). On May 30, 2023 the NOFA was amended to add $26.5 million in other, unspecified, MOHCD funds, for a

[1] The Department of Public Health (DPH) defines Priority Equity Geographies as areas with a higher density of vulnerable populations, including but not limited to seniors, people of color, youth linguistically isolated households, people with disabilities, and people who are unemployed or living in poverty.

total amount of $66.6 million in funding availability. Proposals were due a week later on June 7, 2023 and were evaluated by the same panel using the same criteria as the original NOFA. In response to the NOFA, MOHCD awarded financing to five projects including the proposed 1234 Great Highway project, jointly sponsored by Tenderloin Neighborhood Development Corporation and Self-Help for the Elderly (three other proposals were submitted but disqualified due to not meeting the minimum qualifications specified in the NOFA). Exhibit 1 below summarizes the results of the developer procurement:

Exhibit 1: Qualified Bidders and Selected Projects

Project	Score	Funded Requested	Estimated Number of Homes to be Created
250 Laguna Honda **Mission Housing Development Corporation**	83.2	$8 million	115
3300 Mission **Tabernacle Community Development**	82.4	$6.5 million	40
650 Divisadero **Jonathon Rose Co/Young Community**	80.0	$15 million	95
249 Pennsylvania **Tenderloin Neighborhood Development Corporation and Young Community Developers**	79.0	$13 million	120
1234 Great Highway **Tenderloin Neighborhood Development Corporation and Self Help for the Elderly**	75.0	$24 million	216
Total		**$66.5 million**	**586**

Source: MOHCD June 16, 2023 Selection Memo

The Tenderloin Neighborhood Development Corporation (TNDC) and Self Help for the Elderly (SHE) responded to the NOFA as a joint venture for a proposed project located at 1234 Great Highway. The TNDC and SHE joint venture scored 75 out of 100 points and became one of five teams that were selected from the reissued May 2023 NOFA.

1234 Great Highway Project

The proposed site is in a High Resource Neighborhood and is zoned to support a large number of units which would allow for cost efficiencies, according to the October 2023 MOHCD Loan Evaluation to the Citywide Affordable Housing Loan Committee (MOHCD Loan Evaluation).

According to the MOHCD Loan Evaluation, TNDC executed a Purchase and Sale Agreement with the previous site owner in March 2023. TNDC obtained a $24,000,000 loan from the San Francisco Housing Accelerator Fund (SFHAF) to acquire the site and for predevelopment activities related to the Project. MOHCD intends to provide an acquisition and predevelopment loan to the sponsor in order to pay down the SFHAF loan.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a loan of $24,000,000 to 1234 Great Highway, LLC[2] for new affordable housing for seniors. The loan will consist of $23,348,500 for costs related to the acquisition of the site and $651,500 for certain costs related to the predevelopment of the project. The proposed resolution also (1) approves the form of the loan agreement and related documents; (2) ratifies and approves actions previously taken in connection to the project; (3) authorizes actions to be taken to implement the proposed resolution, including to acquire the property in a foreclosure proceeding; and (4) finds that the loan is consistent the City's General Plan and the priority policies of Planning Code Section 101.1.

The proposed project is expected to result in 216 units of rental housing affordable for low-income and formerly homeless seniors and will include a senior health center operated by Self-Help for the Elderly. Income levels will be used to determine tenant qualifications and the associated mix of units and rents. Exhibit 2 below provides the maximum income levels that will be used to determine tenant qualifications, though the actual unit mix is subject to change upon project construction finance closing.

Exhibit 2: Income and Rent Restrictions

Unit Size	Maximum Income Level (MOHCD Income Level)					
	15%	20%	55%	60%	Mgr.'s Units	Total
Studio	23	24	5	37		89
1 BR	31	32	6	50	2	121
2BR			3	3		6
Total	**54**	**56**	**14**	**90**	**2**	**216**

Source: 1234 Great Highway Loan Agreement

According to the proposed loan agreement, 50 percent of the units will be made available to the chronically senior homeless households or those seniors at risk of homelessness during the period in which the City's Local Operating Subsidy program is in operation and the City provides such subsidy to the project under the LOSP Agreement. If the Local Operating Subsidy Program subsidy to the project ends, then 100 percent of the former LOSP units will at all times be occupied by qualified tenants whose adjusted income does not exceed 60 percent of median income.

In addition, the MOHCD Loan Evaluation noted that the project sponsor is requesting that 87 units, or 40 percent of the total units, be covered by the City's Senior Operating Subsidy (SOS) but at this time no SOS funding is available. Therefore, an alternative source of funds will be needed in order to subsidize the senior units at the desired affordability levels. The Sponsor currently anticipates that two floors will be used as an adult day health care center.

[2] A limited liability corporation formed by TNDC for the acquisition and development of the 1234 Great Highway project.

Specific Loan Conditions

The proposed loan agreement specifies conditions that must be met by 1234 Great Highway, LLC including:

- Conformance to a marketing and tenant selection plan that has been submitted to and approved by the City;
- Restrictions on the amount of and purposes of development fees that may be used prior to the closing date of the borrower's financing for construction;
- Provision of supportive services in the amounts detailed in the 20-Year Cash Flow Proforma, which is included as an attachment to the loan agreement; and
- Services plan and proposed staffing levels that meet MOHCD underwriting standards prior to gap/construction loan approval.

The City intends to enter into a purchase and sale agreement with the sponsor to purchase the site at construction closing. At that time, the acquisition loan will be considered paid in full.

Loan Documents

The proposed resolution also approves the following associated loan documents:

- Declaration of Restrictions and Affordable Housing Covenants, which requires TNDC to maintain the housing affordability levels defined in the loan agreement for the life of the project, even after the loan is paid in full or otherwise satisfied;
- The predevelopment and acquisition promissory notes for the loans; and
- The Deed of Trust between 1234 Great Highway LLC and Old Republic Title Company, on behalf of the City as lender.

FISCAL IMPACT

The proposed loan to 1234 Great Highway, LLC of $24,000,000 includes (a) $23,348,500 for property acquisition, and (b) $651,500 for predevelopment costs. The acquisition loan amount will not accrue any interest. The predevelopment loan amount will be charged simple interest at a rate of three percent per annum, although the loan agreement allows the MOHCD Director to reduce the interest rate to as low as zero percent in order to make the Project financially feasible.

The funding amount is comprised of Low and Moderate Income Housing Asset Funds ($4,047,507) and 2023 Certificates of Participation Funds ($19,952,493). Exhibit 3 below provides the predevelopment financing sources and uses of the loaned funds, as included in the loan agreement.

Exhibit 3: Predevelopment Financing Sources and Uses of Funds

Sources	**Amount**
Low & Moderate Income Housing Asset Fund	$4,047,507
Certificates of Participation	$19,952,493
Total Loan Sources	**$24,000,000**
Uses	
Acquisition and Related Costs	$23,348,500
Predevelopment Soft Costs	$451,500
Developer Fees	$200,000
Total Loan Uses	**$24,000,000**

Source: Loan Agreement Project Pro-Forma

Property Acquisition ($23,348,500)

According to the proposed loan agreement, the loaned amount for acquisition matures on the date that this the earlier of 1) Great Highway, LLC's closing of construction financing for the project, or 2) the Outside Construction Commencement Date. According to its promissory note, the acquisition loan will be deemed repaid once the property is transferred to City ownership.

The proposed loan will provide up to $23,348,500 for property acquisition and closing costs. The property has already been acquired by TNDC, funded by a loan from the Housing Accelerator Fund. Budget documents included in the loan agreement indicate the acquisition cost or value was $21,700,000 and $1,586,576 was incurred in transfer tax, holding costs, and other closing costs, which amount to $23,286,576. This amount was adjusted prior to acquisition of the property to reflect actual closing costs, for a total of $23,348,500.

Predevelopment including Developer Fee ($651,500)

The predevelopment loan is for a term of 55 years from the closing of construction financing, provided that construction begins on or before December 31, 2028. If 1234 Great Highway, LLC fails to commence with construction on or before December 31, 2028 the predevelopment maturity date will be the outside construction commencement date.

The predevelopment loan of $651,500 will pay for engineering and environmental studies, other soft costs, and the developer fee. According to the MOHCD loan evaluation, the predevelopment loan is not sufficient to carry the Sponsor through to construction closing in 2026. The Sponsor plans to enter into a low-interest loan of approximately $5 million from the Corporation for Supportive Housing (CSH) in early 2024 to cover predevelopment expenses not covered by this loan.

The proposed loan agreement provides for payment of a developer fee of up to $550,000, which is included in the predevelopment loan amount of $651,500. The development pro-forma included in the proposed loan agreement shows the developer fee at $200,000. According to MOHCD's Loan Evaluation, TNCD originally proposed a $200,000 developer fee for its predevelopment work, but then MOHCD recommended TNDC request the $550,000, the maximum allowable under MOHCD Underwriting Guidelines because $200,000 was not considered enough to cover TNDC or SHE staff costs through the extended predevelopment period of 3 years.

The developer fee is intended to compensate TNDC for (a) organizational capacity building and maintenance programs; (b) working capital; (c) housing development production and related programs; (d) physical improvements to existing housing owned or sponsored by TNDC; (e) increasing housing operations and asset management activities; (d) improving tenant improvements or commercial space in existing housing owned or sponsored by TNDC; (f) funding community facilities associated with existing housing owned or sponsored by TNDC; (g) providing supplemental tenant rental assistance for existing housing owned or sponsored by TNDC; or (h) programs supporting the welfare of residents residing in existing housing owned or sponsored by TNDC. The developer fee can also be used to pay predevelopment, preconstruction and construction costs, including reasonable administrative expenses, of future affordable housing development sponsored by TNDC in San Francisco.

The loan agreement establishes the following developer fee payment schedule:

Exhibit #: Developer Fee Schedule

Developer Fee Distribution		
Milestone	**% Fee**	**Amount**
Acquisition/ close of predevelopment financing	15%	$165,000
Entitlement Approval	15%	165,000
Submission of HCD Funding Application	10%	110,000
Submission of joint California Debt Limit Allocation Committee and Tax Credit Allocation Committee application	10%	110,000
Total	**100%**	**$550,000**

Source: 1234 Great Highway Proposed Loan Agreement

Future Permanent Financing

At this time, total development costs for the proposed project are $187,165, 227. City loans to the project, estimated to be $74,244,304 including the acquisition, predevelopment, and permanent gap loan, comprise 40 percent of total estimated project and amounts to an estimated $343,724 in City funding per unit. Other funding sources are expected to be Low Income Housing Tax Credits, California Department of Housing and Community Development Multi-Family Housing Program loan, Federal Housing Loan Bank Affordable Housing Program grant funds, developer equity, interim use income, and a private loan.

Any amendments to the proposed loan above $500,000 will be subject to Board of Supervisors approval as will any new loans that cost more than $10 million.

Land Banking

According to Section 3.8 of the proposed loan agreement, if the City determines by December 31, 2028 that the 1234 Great Highway project is unlikely to be developed within a reasonable time period for any reason, including TNDC inability to obtain necessary financing, the City may require either that: (i) TNDC transfer the fee title to the property to another nonprofit corporation, limited partnership or limited liability company designated by the City with the intention that the property be developed for affordable housing; or (ii) that TNDC convey the fee title to City for an amount equal to the outstanding principal balance of the Loan, plus accrued and unpaid interest.

RECOMMENDATIONS

1. Amend the proposed legislation to state that it is the City's intent to enter into a purchase and sales agreement in the future at the closing of the construction loan, in which the City will take ownership of the land at 1234 Great Highway and enter into a ground lease for the land with 1234 Great Highway, LLC.
2. Approve the proposed resolution as amended.

Item 10 **File 23-1199**	**Department:** Mayor's Office of Housing and Community Development (MOHCD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution approves a loan of $15,000,000 to Jonathan Rose Companies (JRCo) and Young Community Developers (YCD) to acquire 650 Divisadero for affordable housing development and pay for predevelopment costs.

Key Points

- In May 2023, the Mayor's Office of Housing and Community Development (MOHCD) issued a revised Notice of Funding Availability (NOFA) for $66.5 million for acquisition and predevelopment financing of affordable housing. In response to the NOFA, MOHCD awarded financing to a project sponsored by JRCo and YCD at 650 Divisadero and four other projects. The project is anticipated to provide 94 units of housing for formerly homeless households and for households at or below 80% Area Median Income (AMI).
- The $15,000,000 loan agreement allocates $12,775,000 in acquisition financing to cover the cost of purchasing the property at 650 Divisadero, as well as the associated taxes and fees. An additional $2,225,000 is designated to pay for design costs, site studies, and fees incurred in the predevelopment phase of the project.

Fiscal Impact

- The proposed loan is funded by a combination of development impact and certificates of participation.
- Repayment of the acquisition loan is due in three years but will be considered repaid upon transfer of the land to the City, at the end of the predevelopment phase. The loan agreement also includes a 3-year term for the predevelopment loan, repaid with any residual project income, and which may be consolidated with permanent financing.

Policy Consideration

- Total MOHCD financing for 650 Divisadero is currently estimated at $349,847 per unit, just under the $350,000 per unit cap of City financing set in the NOFA. MOHCD anticipates that construction costs will exceed current estimates by three million dollars, which may therefore require additional City permanent financing that exceeds the $350,000 per unit limit. MOHCD has advised the developers to revise budgets and seek non-City financing sources as conditions for future permanent financing. Any amendments to the proposed loan above $500,000 will be subject to Board of Supervisors approval as will any new loans that cost more than $10 million.

Recommendations

- Amend the proposed legislation to state that it is the City's intent to enter into a purchase and sales agreement in the future at the closing of the construction loan, in which the City will take ownership of the land and enter into a ground lease with the project sponsor.
- Approve the proposed resolution, as amended.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

In 2022, the Board of Supervisors appropriated $112 million in Certificates of Participation proceeds for FY 2022-2023 intended to develop and repair the City's affordable housing stock in line with the General Plan's housing element. This funding, administered by MOHCD, allocates $40 million for acquisition of 100% affordable housing projects in California Debt Limit Allocation Committee (CDLAC)-designated high-resource areas.[1]

MOHCD issued a Notice of Funding Availability (NOFA) in January 2023 for $40 million in designated City funding for site acquisition and predevelopment financing of affordable housing, including projects for formerly homeless households. Proposals were due April 7, 2023, and were evaluated by four MOHCD staff and one staff person from the Department of Homelessness and Supportive housing (HSH) on experience (40 points) and project attributes, which include program, community engagement strategy, service delivery, financing and cost containment, and racial equity strategy (together 60 points).

On May 30, 2023, the NOFA was amended to add $26.5 million in other, unspecified, MOHCD funds, for a total amount of $66.6 million in funding availability.[2] Proposals were due a week later on June 7, 2023, and were evaluated by the same panel using the same criteria as the original NOFA. In response to the NOFA, MOHCD awarded financing to five projects[3] including the 650 Divisadero project, jointly sponsored by Jonathan Rose Companies and Young Community Developers. Exhibit 1 below summarizes the results of the developer procurement:

[1] CDLAC incorporates the California Tax Credit Allocation Committee (CTCAC) and California Department of Housing and Community Development's (HCD) Opportunity Map designations into their application process. High Resource Areas are those that have been shown by research to be associated with positive socioeconomic outcomes for low-income households.

[2] The MOHCD Memo for 2023 Acquisition NOFA Recommendations indicates that the scoring panel requested $2,500,000 in additional funds to satisfy the full acquisition and predevelopment costs for the 249 Pennsylvania project. Neither the $24,000,000 funding request amount nor explanation of when 1234 Great Highway was added to applicant pool was discussed in MOHCD's memo.

[3] Three other proposals were submitted but disqualified because they did not meet minimum qualifications.

Exhibit 1: Sites Awarded Funds and Scoring Under 2023 Acquisition and Predevelopment NOFA

Project	Developer	NOFA Score (out of 100)	Funding Award
250 Laguna Honda	Mission Housing Development Corporation	83.2	$8,000,000
3300 Mission	Bernal Heights Housing	82.4	$6,500,000
650 Divisadero	Jonathan Rose Co & Young Community Developers	80.0	$15,000,000
249 Pennsylvania	Tenderloin Neighborhood Development Corporation & Young Community Developers	79.0	$13,000,000
1234 Great Highway	Tenderloin Neighborhood Development Corporation	75.0	$24,000,000
Total			**$66,500,000**

Source: MOHCD Memo for 2023 Acquisition NOFA Recommendations

The project at 650 Divisadero was the third highest scoring application received by MOHCD, receiving 80 out of 100 possible points based on application criteria. MOHCD determined that the project at 650 Divisadero met the following required eight outcomes outlined in the NOFA: (1) Project is best positioned to secure funding from the California Debt Limit Allocation Committee; (2) Project maximizes density and unit count; (3) Project implements an interim use plan for the site that outlines contingencies for construction start delays; (4) Project has a maximum $350,000 per unit City subsidy, including land; (5) Project designates a minimum of 25% of the units for households experiencing homelessness; (6) Project aligns with the implementation of City policies regarding anti-displacement, racially inclusive communities, and creating stable housing for vulnerable populations; (7) Project creates opportunities for the growth of emerging developers; and (8) Project serves at least 30% Extremely Low Income households.[4]

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a loan of $15,000,000 to Grove Street Development LP, a joint venture of Jonathan Rose Companies (JRCo) and Young Community Developers (YCD), a non-profit, to acquire 650 Divisadero for affordable housing development and pay for

[4] HCD defines Extremely Low Income households as households at or below 30% Area Median Income (AMI).

predevelopment costs. Predevelopment activities funded by the proposed loan include obtaining design work and obtaining permanent financing.

The proposed resolution also (1) finds that the loan is not subject to CEQA and is consistent with the City's General Plan and the priority policies of Planning Code Section 101.1; (2) authorizes MOHCD to enter into and modify loan documents in consultation with the City Attorney, (3) authorizes MOHCD to act in favor of the City's financial interest in the property, including acquiring the property at a foreclosure; (4) ratifies and approves actions to be taken to implement the proposed resolution; and (5) instructs MOHCD to fully execute and bring to the Clerk of the Board the loan agreement.

Project Description

The proposed project will potentially construct 95 units of residential rental housing, utilized by formerly homeless families and households at or below 80% MOHCD area median income (AMI), as shown in Exhibit 2 below.

Exhibit 2: Unit Mix and Income Levels

Unit Type	Proposed Number of Units
Formerly Homeless	
Studio	7
One Bedroom	7
Two Bedroom	6
Three Bedroom	4
Subtotal Formerly Homeless	24
AMI Restricted	
Studio – 30% AMI	6
Studio – 65% AMI	3
One Bedroom – 65% AMI	5
Two Bedroom – 65% AMI	4
Three Bedroom – 65% AMI	7
Studio	9
One Bedroom	5
Two Bedroom	14
Three Bedroom	17
Subtotal AMI Restricted	70
Two Bedroom (manager's unit)	1
Total Units	**95**

Source: MOHCD

The proposed loan agreement mandates 24 of the project's units must be dedicated to homeless households or those at risk of homelessness during the period in which the City's Local Operating

Subsidy Program (LOSP) is in operation. The project's remaining units include 70 units at varying AMI levels according to MOHCD unit mix recommendations outlined by the NOFA.

Currently, there are no finite plans to incorporate commercial ground floor space at 650 Divisadero. JRCo and YCD are exploring the possibility to seek a waiver for commercial space from the Planning Department to construct additional units on the ground floor. There will otherwise be designated space on the ground floor for two property management offices and three onsite services offices. Lutheran Social Services will be the service provider for the project and will hire up to 3 full time employees to administer supportive resident services.

Loan Documents

The proposed resolution also approves the following associated loan documents:

- Loan Agreement
- The predevelopment and acquisition promissory notes for the loans;
- A Declaration of Restrictions, which requires JRCo and YCD to maintain the housing affordability levels defined in the loan agreement for the entire lifespan of the project; and
- The Deed of Trust.

FISCAL IMPACT

Exhibit 3 below summarizes the sources and uses of the proposed loan funds. The MOHCD predevelopment and acquisition loan to 650 Divisadero will be financed by a mix of Certificates of Participation, Van Ness-Market Housing Funds, and Market Octavia Housing Funds. The Loan Agreement Budget reflects additional sources and uses for the interim use of the property at 650 Divisadero between acquisition and construction. The current tenant at 650 Divisadero will continue occupying the property up until three months prior to construction. Monthly rental payments made from the current tenant to JRCo and YCD will cover costs incurred during this time.

Exhibit 3: Predevelopment Sources and Uses

	Proposed Amount
Sources	
Van Ness-Market Housing Funds	$6,442,911
Market Octavia Housing Funds	$3,454,619
Certificates of Participation	$5,102,470
Interim Use (Non-MOHCD Source)	$700,707
Total Sources	**$15,700,707**
Uses	
Acquisition	$12,775,000
Soft Costs	$2,375,707
Developer Fee	$550,000
Total Acquisition & Predevelopment	**$15,700,707**

Source: 650 Divisadero MOHCD Application Pro Forma

Property Acquisition Loan

Grove St Development, LP intends to purchase 650 Divisadero from its current owner, Divco Group, LLC between December 26, 2023 and January 26, 2024 for $12,250,000.[5] Total acquisition costs of $12,775,000 also include a $250,000 transfer tax and $25,000 in legal fees.

A March 2023 appraisal of 650 Divisadero by CBRE valued the property and its current structure at $12,300,000 according to an analysis of recent sale points of comparable properties and recommendations established by the Uniform Standards of Professional Appraisal Practice.

The acquisition loan term is for 3 years but will be considered repaid upon the transfer of the site to the City at 0 percent interest. MOHCD would then enter into a 75-year initial ground lease agreement with JRCo and YCD at the time of construction start. Annual rent would be set at 10% of the fair market unrestricted value of the property and redetermined every 15 years.

Predevelopment Loan

The predevelopment loan of up to $2,225,000 is primarily comprised of architectural design fees, estimated at $1,283,000. The remaining financing includes the site studies and permit fees associated with the 2-year predevelopment period. The predevelopment loan term is for 3 years and will accrue at 3 percent interest each year. The loan agreement indicates JRCo and YCD may consolidate the predevelopment loan with the eventual MOHCD-issued permanent loan over a 57-year term. Remaining pre-development costs of approximately $150,000 will be covered by interim use revenues, described below.

Interim Use

650 Divisadero is currently being occupied and leased by Seismic Retrofitters, who will continue renting the property from Grove St Development for $15,000 per month until September 2025.

[5] Divco Group, LLC accepted the February 2023 offer to purchase 650 Divisadero by the sponsors of the proposed project. A final purchase and sale agreement was executed in April 2023.

Developer Fee

The proposed loan agreement provides for a standard payment of a developer fee to JRCo and YCD of $550,000. MOHCD has asked JRCo and YCD to submit evidence that the developer fee will be split between JRCo and YCD prior to loan disbursement. The loan agreement assigns the payment schedule shown below in Exhibit 4.

Exhibit 4: Developer Fee Payment Schedule

Developer Fee Distribution		
Milestone	**% Fee**	**Amount**
Acquisition/ close of predevelopment financing	15%	$165,000
Approval of schematic design/site plan	15%	$165,000
Preliminary gap loan approval prior to submission of California Department of Housing & Community Development funding application	10%	$110,000
Submission of joint California Debt Limit Allocation Committee and Tax Credit Allocation Committee application	10%	$110,000
Total	**100%**	**$550,000**

Source: Proposed Loan Agreement

Permanent Financing

At this time, estimated total development costs for the proposed project to be $105,770,739. Total City loans to the 650 Divisadero project, estimated to be $33,235,439 including the acquisition and predevelopment loans, comprise 31 percent of total estimated project funding. Other funding sources for 650 Divisadero are expected to be the California Department of Housing and Community Development Multifamily Housing Program, Low Income Housing Tax Credits, and general partner equity.

Total MOHCD loan financing per unit is currently estimated at $349,847, just under the $350,000 per unit cap set in the NOFA. MOHCD noted this issue in their loan evaluation report and indicated elsewhere that the proforma submitted by JRCo and YCD did not accurately account for construction costs or year-to-year cost escalation of 5%. The project's contractors provided an initial estimate of $59.7 million while the latest version of the project's proforma estimates total construction costs at $69.1 million. MOHCD evaluated the costs at approximately $72 million. In their loan evaluation memo, MOHCD indicated that there would be no additional financing towards the predevelopment stage, and did not guarantee gap financing, but did not commit to a financing cap for the construction phase of development. If MOHCD cost projections are correct, the project's cost may exceed the $350,000 City subsidy cost per unit.

Any amendments to the proposed loan above $500,000 will be subject to Board of Supervisors approval as will any new loans that cost more than $10 million.

Land Banking

According to Section 3.8 of the proposed loan agreement, if the City determines by the Outside Construction Commencement Date that the 650 Divisadero project is unlikely to be developed within a reasonable time period for any reason, including JRCo and YCD inability to obtain necessary financing, the City may require that JRCo and YCD transfer the fee title of the property either to another nonprofit corporation or affordable housing developer or to the City for an amount equal to the outstanding principal balance of the loan, plus accrued and unpaid interest.

POLICY CONSIDERATION

Financial Feasibility

The proposed loan agreement outlines conditions for additional City financing that would commit MOHCD to issuing construction and permanent financing for 650 Divisadero. These terms require JRCo and YCD to secure state funding programs and tax credit equity, revise preliminary development budgets, establish a services and staffing plan in accordance with MOHCD underwriting guidelines, and work with MOHCD and the Department of Homelessness & Supportive Housing to seek ways to utilize all supportable debt and other financing sources available. If construction costs exceed the proposed budget, or if additional costs are not absorbed by non-City funding, the project at 650 Divisadero will exceed the $350,000 per unit cap of City financing set by the NOFA.

RECOMMENDATIONS

1. Amend the proposed legislation to state that it is the City's intent to enter into a purchase and sales agreement in the future at the closing of the construction loan, in which the City will take ownership of the land and enter into a ground lease with the project sponsor.
2. Approve the resolution, as amended.