

LEGISLATIVE DIGEST

[Administrative Code - Port Pre-Payment of Jobs - Housing Linkage Program Obligations]

Ordinance amending the San Francisco Administrative Code, by adding Section 61.12, to authorize pre-payment of Jobs-Housing Linkage Program obligations for developments on certain Port lands; and adopting environmental findings.

Existing Law

The Jobs-Housing Linkage Program (JHLP) described in Planning Code sections 413 et seq. provides for the imposition of fees on development of most types of commercial development to offset the new demand for affordable housing produced by new employment. Current fees range from \$13.30 per gross square foot (gsf) for new research and development space to \$19.96/gsf for new office space.

The Burton Act (stats. 1968, ch. 1333) and San Francisco Charter Sections B3.581 - B7.305 provide for the San Francisco Port Commission to manage the 7.5 miles of San Francisco's waterfront from Fisherman's Wharf to Pier 98 near India Basin in trust for the people of California. Most of the Port's holdings are subject to land use restrictions under the Burton Act trust and the common law trust for navigation, commerce, and fisheries (public trust). Private development on Port property is subject to impact fees prescribed by the Planning Code, including JHLP fees.

In Senate Bill 815 (stats. 2007, ch. 660) (SB 815), the State Legislature found that certain seawall lots under the Port's jurisdiction were no longer useful to the public trust and authorized the Port to lease them for non-trust purposes (such as housing, which is not a permitted trust use) for periods of not more than 75 years at fair market value to generate revenues for the Port's Harbor Fund. SB 815 applies to three triangular-shaped parcels south of Market Street and a 16-acre parcel known as Seawall Lot 337 in Mission Bay (SB 815 parcels). All of the SB 815 parcels are currently used for surface parking, a land use that does not represent the highest and best use of waterfront property.

Amendments to Current Law

Assemblymember Ammiano is sponsoring Assembly Bill 2649 (AB 2649), which was passed unanimously by the Assembly and is awaiting assignment to committee in the Senate. If passed, AB 2649, based upon findings that Seawall Lot 322-1 (bounded by Broadway, Front, and Vallejo Streets) is no longer useful to the public trust, would authorize the Port to lease it for non-trust purposes on the same conditions as the SB 815 parcels, except that the Port would be authorized to enter into a lease for affordable housing at below-market rents if the Port receives fair market value by other means. AB 2649 would also authorize the Port to lease other seawall lots for non-trust purposes if the State Lands Commission makes findings

that they are no longer useful for trust purposes. This ordinance would provide one mechanism for the Port to receive fair market value if it enters into below-market leases of non-trust Port lands to the Mayor's Office of Housing (MOH) for affordable housing.

This ordinance would authorize the Port and MOH to enter into a memorandum of understanding (MOU) providing for the Port to receive credits equal to the difference in the value of a Port below-market lease to MOH and the fair market value of the leased land. The Port would be authorized to use these credits the prepay JHLP obligations for future private development on Port lands. By enacting this ordinance, the City would: create a mechanism to provide valuable resources for affordable housing in the City; give the Port flexibility in structuring JHLP obligations to mitigate financial hardships caused by economic cycles; and improve the financial feasibility of Port development.

Background Information

As trustee of public trust lands, the Port strives to redevelop lands under its jurisdiction for productive purposes that are consistent with the public trust and applicable land use regulations, including the Port's Waterfront Land Use Plan. These efforts are often frustrated by the high costs of waterfront development: Port lands are predominantly filled tidelands, requiring expensive pile supports to ensure seismic safety; Port lands include numerous historic structures listed on or eligible for listing on the National Register of Historic Places that require costly rehabilitation; some Port lands are brownfields requiring remediation prior to development; and both the public trust and the McAteer-Petris Act (Gov. Code §§ 66600 et seq.), under which the Bay Conservation and Development Commission regulates shoreline development, promote high-quality public access to the shoreline in the form of parks and open space. To address the high costs of waterfront development, the Port requires flexible financing strategies to address project costs, including associated development exactions imposed by the City.

Some Port property under the Port's jurisdiction, including the SB 815 parcels, are no longer needed for trust purposes. Affordable housing would be an appropriate use of these lands. However, SB 815 requires fair market rents for leases of SB 815 parcels, which would make development of affordable housing on these lands infeasible. If the Legislature passes AB 2649, the Port will have the authority, with State Lands Commission concurrence, to offer certain Port lands at below-market rents for affordable housing purposes, provided the Port obtains total consideration equal to fair market value.

This ordinance would provide one mechanism needed to meet the requirements of AB 2649, if passed, by permitting the Port to offer lands that are no longer needed for public trust purposes at or below fair market value to MOH for development of affordable housing, while receiving credits up to the market value of the land to offset JHLP fees owed on these parcels or elsewhere on Port property.