

AMENDED IN COMMITTEE
09/11/2014

FILE NO. 140939

RESOLUTION NO.

1 [Board Response - Civil Grand Jury Report - The Port of San Francisco, Caught Between
2 Public Trust and Private Dollars]

3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2013-2014 Civil Grand Jury Report, entitled**
5 **“The Port of San Francisco, Caught Between Public Trust and Private Dollars;” and**
6 **urging the Mayor to cause the implementation of accepted findings and**
7 **recommendations through his/her department heads and through the development of**
8 **the annual budget.**

9
10 WHEREAS, Under California Penal Code, Section 933 et seq., the Board of
11 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
12 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

13 WHEREAS, In accordance with California Penal Code, Section 933.05(c), if a finding or
14 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
15 county agency or a department headed by an elected officer, the agency or department head
16 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
17 response of the Board of Supervisors shall address only budgetary or personnel matters over
18 which it has some decision making authority; and

19 WHEREAS, The 2013-2014 Civil Grand Jury Report, entitled “The Port of San
20 Francisco, Caught Between Public Trust and Private Dollars” is on file with the Clerk of the
21 Board of Supervisors in File No. 140939, which is hereby declared to be a part of this
22 resolution as if set forth fully herein; and

23 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
24 to Finding Nos. 1, 4, 6, 8, and 11, as well as Recommendation Nos. 1, 4b, 6, 8a, 8b, and 11
25 contained in the subject Civil Grand Jury report; and

1 WHEREAS, Finding No. 1 states: "Recent activities at the Port have been strongly
2 influenced by the Mayor's office. These included the promotion of the 8 Washington Street
3 project, most aspects of the 34th America's Cup races, a "legacy project" at Pier 30-32, and
4 an underutilized cruise ship terminal at Pier 27. The Port Commission readily gave approvals
5 with minimal public input. All other commissions dealing with land use decisions, including
6 Planning, Building Inspection, and Board of Permit Appeals, are not appointed solely by the
7 mayor. Section 12 of the Burton Act specifies that all five Harbor Commissioners be appointed
8 by the Mayor and confirmed by the Board;" and

9 WHEREAS, Finding No. 4 states: "The priority of the Port for development is to create
10 an income stream for capital improvements rather than a determination of how best to
11 enhance the quality of life for the residents of the City. Port revitalization has been enhanced
12 in the past by adherence to the Waterfront Land Use Plan. Developments have provided local
13 business opportunities, mixed housing where appropriate, stronger public transit options,
14 maintenance of height and bulk limits, and preservation of view corridors. Some uses,
15 however, both current and proposed, of Port land do not conform to the Waterfront Land Use
16 Plan. Zoning and height limits have been changed by the Planning Department and the
17 Mayor's Office. There is a lack of transparency in development proposals, particularly in
18 regard to input from the Mayor's Office and active involvement of former Mayoral staff
19 advocating on behalf of developers, giving rise to concerns that an agreement had been
20 reached prior to public input;" and

21 WHEREAS, Finding No. 6 states: "When it becomes operational, the Cruise Ship
22 Terminal at Pier 27 is projected to be severely underutilized. This is because federal law,
23 namely the Passenger Vessel Services Act of 1886, prohibits foreign-flagged passenger ships
24 from calling on two U.S. ports without an intervening foreign port. This Act greatly restricts the
25 use of the newly built Cruise Ship Terminal. The Port estimates that the use of the terminal

1 would increase from the current 50 visits per year to 150 visits if the Passenger Vessel
2 Services Act of 1886 were amended or the Port were granted an exemption for a pilot
3 program. It is also estimated that there is between \$750,000 and \$1 million economic benefit
4 to the City from each docking. This includes ship provisioning, tourism, berthing fees and
5 tugboats;” and

6 WHEREAS, Finding No. 8 states: “The 34th America’s Cup was a major monetary loss
7 to the City’s taxpayers to the tune of about \$6 million and a major loss to the Port of about
8 \$5.5 million in unreimbursed Port expenditures. The City and the Port subsidized the
9 America’s Cup at taxpayers’ expense. The City received no direct revenue from the 34th
10 America’s Cup event in the form of revenue sharing or venue rent. In negotiating event and/or
11 development agreements at the waterfront, the City and Port does not seek to make a profit
12 from the deal but is simply looking to recover its costs and break even;” and

13 WHEREAS, Finding No. 11 states: “Although State Law does not require voter
14 approval for the issuance of Port IFD Bonds, voter approval yields greater public awareness
15 of the costs of proposed Port developments;” and

16 WHEREAS, Recommendation No. 1 states: “The Port Commission should be
17 restructured to reflect more public interest. The Jury recommends that the Board of
18 Supervisors seek necessary changes in state law to allow a charter amendment to be
19 submitted to the public for revision of the current five-member Port Commission appointed by
20 the Mayor to a Port Commission with three mayoral appointees and two by the Board of
21 Supervisors. We recommend that this change be put before the voters in 2015;” and

22 WHEREAS, Recommendation No. 4b states: “The Port should ensure that changes or
23 variances to the existing Waterfront Land Use Plan or the City’s General Plan should have
24 extensive public input before implementation;” and

1 WHEREAS, Recommendation No. 6 states: "The City should immediately begin
2 lobbying for modifications to the Passenger Vessel Services Act of 1886 to allow foreign
3 flagged vessels easier access to the City as a pilot program. This lobbying effort should be in
4 conjunction with other U.S. passenger port destinations including those in Alaska, Hawaii,
5 Oregon, and Washington;" and

6 WHEREAS, Recommendation No. 8a states: "All major events at the Port, like the
7 America's Cup, must be approved by the Port Commission and the Board of Supervisors;"
8 and

9 WHEREAS, Recommendation No. 8b states: "Prior to approval, the City should
10 require a validated cost proposal using fair market rental rates, revenue sharing with the Port,
11 marquee billing for the City, full post-event accounting, and posting of all event financials on
12 the Port website within one month after completion of the event. Said report shall include an
13 itemization of: 1) The amount and source of all revenue generated by the event; 2) The
14 amount, payor, and payee of each cost incurred for the event; and 3) The name of each event
15 cancelled, if any, as a result of the approval of the event and the amount of revenue lost as a
16 result of the cancellation;" and

17 WHEREAS, Recommendation No. 11 states: "The Jury recommends that the Port
18 Commission work with the Board of Supervisors to place a referendum before the voters that
19 asks for approval to issue IFD Bonds. Such a referendum should specifically state the total
20 amount of bonded indebtedness that the Port seeks to incur through IFD Bonds, the specific
21 sources of funds for IFD Bond repayment, and the length of time required to discharge any
22 IFD Bond debt;" and

23 WHEREAS, In accordance with California Penal Code, Section 933.05(c), the Board of
24 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
25

1 Court on Finding Nos. 1, 4, 6, 8, and 11, as well as Recommendation Nos. 1, 4b, 6, 8a, 8b,
2 and 11 contained in the subject Civil Grand Jury report; now, therefore, be it

3 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
4 Superior Court that the Board of Supervisors partially disagrees with Finding No. 1, for
5 reasons as follows: The Board of Supervisors cannot speak to the specific level or nature of
6 influence as it is not privy to all the interactions between the Mayor's Office and the Port,
7 though the Mayor's Office does influence many activities at the Port and throughout the City. It
8 is difficult to assess "minimal public input" but, based on available evidence, the Board
9 believes the Port Commission has followed the same practices as every other City agency
10 with respect to public comment, open meetings, etc. There are several other commissions
11 that deal with land use decisions and are appointed by the Mayor, including: the Public
12 Utilities Commission, Recreation and Park Commission, Airport Commission, Fire
13 commission, and Municipal Transportation Agency Board. The Port like any other
14 Commission did its due diligence in trying to obtain public comment; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
16 Supervisors partially disagrees with Finding No. 4, for reasons as follows: Creating
17 developments that help fund capital improvements and enhancing quality of life are not
18 mutually exclusive objectives. When done right, Port projects should do both. Local business
19 opportunities, mixed housing and stronger public transit are all vital aspects of good
20 development, and the Board encourages the Port to foster those. The Board of Supervisors
21 agrees that nonconforming uses should be considered very carefully on a case-by-case basis
22 with public involvement; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
24 Supervisors agrees with Finding No. 6, for the reason as follows: The Board cannot confirm
25

1 those exact figures, but definitely agrees that, irrespective of the difficulty in achieving it, such
2 an amendment to the Act would benefit the Port and the City; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
4 Supervisors partially disagrees with Finding No. 8, for reasons as follows: The City and the
5 Port lost money on the 34th America's Cup, but San Francisco experienced a net economic
6 benefit. The Board of Supervisors will defer to the Port and the Civil Grand Jury on the exact
7 figures. The City's model for this event was speculative and dependent upon fundraising.
8 There was known risk involved, and that risk was realized as the fundraising fell far short of
9 goals. If the fundraising had succeeded as planned and the event's model had worked as
10 hoped, the City's tax base would have netted revenue. So the objective was to make a profit,
11 but the finding is correct that the objective was not realized. At the same time, 87% of Port
12 funds went into infrastructure development and \$500 million of overall economic activity was
13 generated; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
15 Supervisors partially disagrees with Finding No. 11, for reasons as follows: Voter approval
16 would yield greater awareness, but is neither required by law nor necessary to ensure the
17 taxpayers' interests are protected. Port Infrastructure Financing Districts (IFDs) are repaid via
18 incremental tax generated from Port property and do not increase taxes on voters. Other City
19 agencies successfully issue similar bonds without voter approval, such as Municipal
20 Transportation Agency (MTA) revenue bonds. Bonds that do encumber taxpayers, such as
21 General Obligation bonds, rightly require voter approval; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
23 No. 1 will not be implemented, for reasons as follows: Such an effort is well beyond the Board
24 of Supervisors' jurisdiction, requiring both State legislative change as well as San Francisco
25 voter approval. San Francisco's state representatives are the more appropriate officials to

1 undertake this effort. Further, there is a process for how Port Commissioners are selected that
2 goes through the Board of Supervisors; when the Mayor nominates a Commissioner, that
3 nomination is subject to Board of Supervisors' approval and a public hearing is held by the
4 Board's Rules Committee; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
6 No. 4b has been implemented, for reasons as follows: As noted in the Port's response, "all
7 Port development projects undergo a robust public review and vetting process;" and, be it

8 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
9 No. 6 will not be implemented, for reasons as follows: The Board of Supervisors is not the
10 appropriate City body to spearhead such an effort; however, the Board of Supervisors
11 encourages the Port to advocate and pursue any amendments to or exemptions from the
12 Passenger Vessel Services Act (PVSA) that could benefit the Port and the City. The Board
13 will support the Port in this effort however it can; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
15 No. 8a has been implemented, for reasons as follows: "Major" is a subjective term, but if it is
16 taken to mean an event similar to the 34th America's Cup, this recommendation has been
17 implemented. As the Port's response notes, the America's Cup was extensively vetted and
18 approved by both the Port Commission and the Board of Supervisors; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
20 No. 8b has been implemented, for reasons as follows: The Port's response indicates that it
21 has and will continue implementing this recommendation, which the Board of Supervisors fully
22 supports; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
24 No. 11 will not be implemented, for reasons as follows: The Board of Supervisors has placed
25 significant restrictions on how the Port exercises IFD bonds, and it is via processes that

1 involve extensive public review. Voter approval would yield greater awareness, but is neither
2 required by law nor necessary to ensure the taxpayers' interests are protected. Port IFDs are
3 repaid via increment tax generated from Port property and do not increase taxes on voters.
4 Other City agencies successfully issue similar bonds without voter approval, such as
5 Municipal Transportation Agency revenue bonds. Bonds that do encumber taxpayers, such as
6 General Obligation bonds, rightly require voter approval; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
8 implementation of the accepted findings and recommendations through his/her department
9 heads and through the development of the annual budget.