

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
Todd Rufo, Director, Office of Economic and Workforce Development

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: July 10, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Christensen on July 7, 2015:

File No. 150735

Resolution approving an agreement with the nonprofit Owners' Association for Administration/Management of the established property-based Community Benefit District known as the "Lower Polk Community Benefit District," pursuant to California Streets and Highways Code, Section 36651, for a period commencing upon Board approval, through June 30, 2029.

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

c:
Todd Rydstrom, Office of the Controller
Crezia Tano, Office of Economic and Workforce Development

1 [Agreement - Owners' Association for Administration/Management of Lower Polk Community
Benefit District]

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3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **Administration/Management of the established property-based Community Benefit**
5 **District known as the "Lower Polk Community Benefit District," pursuant to California**
6 **Streets and Highways Code, Section 36651, for a period commencing upon Board**
7 **approval, through June 30, 2029.**

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9 WHEREAS, On June 3, 2014, acting pursuant to Article XIID of the California
10 Constitution, Section 53753 of the California Government Code, and the Property and
11 Business Improvement District Law of 1994 (Part 7 of Division 18 of the California Streets and
12 Highways Code, commencing with Section 36600), as augmented by Article 15 of the San
13 Francisco Business and Tax Regulations Code, the Board of Supervisors adopted Resolution
14 No. 177-14 ("Resolution of Intention") declaring the Board's intention to establish the property-
15 based special assessment district to be known as the Lower Polk Community Benefit District;
16 and declaring the Board's intention to levy assessments on parcels to be included within the
17 district, setting the public hearing, initiating mail ballot majority protest proceedings, approving
18 the management district plan entitled "The Lower Polk Community Benefit District
19 Management Plan" (the "Management District Plan" or "Plan"), making various findings, and
20 taking other legislative actions required to form the proposed district and levy the proposed
21 assessments (Board File No. 140512); and

22 WHEREAS, On July 29, 2014, acting pursuant to the aforementioned legal authorities,
23 the Board of Supervisors adopted Resolution No. 314-14 ("Resolution to Establish," Board
24 File No. 140820), establishing the property-based Community Benefit District designated as
25 the "Lower Polk Community Benefit District" and levying multi-year special assessments on

1 Identified Parcels (as defined in Section 53750(g) of the Government Code) included within
2 the District (the "Assessments"); and the Controller's designation for the Assessments for the
3 Lower Polk Community Benefit District is Special Assessment No. 74; and

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

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

17 WHEREAS, Pursuant to the Resolution to Establish and Sections 36612 and 36650 of
18 the Streets and Highways Code, the Board of Supervisors may contract with a private
19 nonprofit entity referred to as an "Owners' Association" to administer the District Programs.
20 An Owners' Association may be an existing nonprofit entity or a newly formed nonprofit entity.
21 An Owners' Association is a private entity and may not be considered a public entity for any
22 purpose, nor may its board members or staff be considered to be public officials for any
23 purpose; provided, however, that an Owner's Association must comply with the Ralph M.
24 Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the
25 Government Code) at all times when its board of directors or any committee thereof hears,

1 considers or deliberates on matters concerning the District, and must comply with the
2 California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government Code) for purposes of providing public access to records relating to
4 the District; and

5 WHEREAS, An Owners' Association is obligated to hold in trust all funds it receives
6 from the City that are derived from the City's levy and collection of the Assessments, and to
7 use such funds exclusively for the purposes of implementing the Management District Plan
8 and administering, managing and providing District Programs set forth in the Plan, Resolution
9 to Establish, and annual budgets submitted by the Owners' Association and approved by the
10 Board of Supervisors; and

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

14 WHEREAS, The Office of Economic and Workforce Development has negotiated an
15 agreement with the California nonprofit corporation Lower Polk Community Benefit District,
16 Inc., to, in good faith and with diligence as the Owners' Association for the District, develop,
17 implement, direct, manage, administer, operate and ensure the timely provision of the District
18 Programs ("Management Agreement" or "Agreement"). The Management Agreement is on
19 file with the Clerk of the Board of Supervisors in File No. 150735, which is hereby declared to
20 be a part of this Resolution as if set forth fully herein; and

21 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
22 the Resolution to Establish and the express terms of the Management Agreement, the
23 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
24 Resolution; and

1 WHEREAS, It is in the best interest of the City and the property owners within the
2 District for the City to enter into the Management Agreement with the Lower Polk Community
3 Benefit District, Inc., according to the terms and conditions set forth therein; and

4 WHEREAS, The Planning Department has determined that the actions contemplated in
5 this Resolution comply with the California Environmental Quality Act (California Public
6 Resources Code Sections 21000 et seq.); and

7 WHEREAS, Said determination is on file with the Clerk of the Board of Supervisors in
8 File No. 150735 and is incorporated herein by reference; now, therefore, be it

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

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

13 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
14 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
15 File No. 150735, which is hereby declared to be a part of this Resolution as if set forth fully
16 herein.

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

23 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
24 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
25 Board, the Office of Economic and Workforce Development may execute amendments to the

1 Agreement on behalf of the City and County of San Francisco that are consistent with the
2 Management District Plan, Resolution to Establish, official City policies and applicable law.

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