

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller
Mohammed Nuru, Director, Public Works

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

DATE: November 24, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Cohen on November 17, 2015:

File No. 151189

Resolution approving an agreement with the nonprofit Owners' Association for administration/management of the established property-based Green Benefit District known as the "Dogpatch & Northwest Potrero Hill Green Benefit District," pursuant to California Streets and Highway Code, Section 36651, for a period commencing upon Board approval, through June 30, 2025.

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
Jonathon Goldberg, Public Works
Frank Lee, Public Works

1 [Agreement - Owners' Association for Administration/Management of Dogpatch & Northwest
2 Potrero Hill Green Benefit District]

3 **Resolution approving an agreement with the nonprofit Owners' Association for**
4 **administration/management of the established property-based Green Benefit District**
5 **known as the "Dogpatch & Northwest Potrero Hill Green Benefit District," pursuant**
6 **California Streets and Highway Code, Section 36651, for a period commencing upon**
7 **Board approval through June 30, 2025.**

8
9 WHEREAS, On June 9, 2015, 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 15A of the San
13 Francisco Business and Tax Regulations Code ("Article 15A"), the Board of Supervisors
14 adopted Resolution No. 198-15 ("Resolution of Intention") declaring the Board's intention to
15 establish the property-based special assessment district to be known as the Dogpatch &
16 Northwest Potrero Hill Green Benefit District; and declaring the Board's intention to levy
17 assessments on parcels to be included within the district, setting the public hearing, initiating
18 mail ballot majority protest proceedings, approving the management district plan entitled "The
19 Dogpatch & Northwest Potrero Hill Green Benefit District Management Plan" (the
20 "Management District Plan" or "Plan"), making various findings, and taking other legislative
21 actions required to form the proposed district and levy the proposed assessments (Board File
22 No. 150535); and

23 WHEREAS, On July 31, 2015, acting pursuant to the aforementioned legal authorities,
24 the Board of Supervisors adopted Resolution No. 301-15 ("Resolution to Establish," Board
25 File No. 150795), establishing the property-based Green Benefit District designated as the

1 "Dogpatch & Northwest Potrero Hill Green Benefit District" and levying multi-year special
2 assessments on Identified Parcels (as defined in Section 53750(g) of the Government Code)
3 included within the District (the "Assessments"); and the Controller's designation for the
4 Assessments for the Dogpatch & Northwest Potrero Hill Green Benefit District is Special
5 Assessment No. 33; and

6 WHEREAS, Pursuant to the aforementioned legal authorities and the Resolution to
7 Establish, the Assessments may only be used to fund property-related services,
8 "Improvements" (as defined in California Streets and Highways Code, Section 36610 and
9 Article 15A) and "Activities" (as defined in California Streets and Highways Code, Section
10 36606) within the District in accordance with the Management District Plan (collectively, such
11 authorized services, improvements and activities are referred to here as "District Programs");
12 and

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

20 WHEREAS, Pursuant to the Resolution to Establish and California Streets and
21 Highways Code, Sections 36612 and 36650, the Board of Supervisors may contract with a
22 private nonprofit entity referred to as an "Owners' Association" to administer the District
23 Programs; and

24 WHEREAS, An Owners' Association may be an existing nonprofit entity or a newly
25 formed nonprofit entity; and

1 WHEREAS. An Owners' Association is a private entity and may not be considered a
2 public entity for any purpose, nor may its board members or staff be considered to be public
3 officials for any purpose; provided, however, that an Owner's Association must comply with
4 the Ralph M. Brown Act (Government Code, Title 5, Division 2, Part 1, Chapter 9,
5 commencing with Section 54950) at all times when its board of directors or any committee
6 thereof hears, considers or deliberates on matters concerning the District, and must comply
7 with the California Public Records Act (Government Code, Title 1, Division 7, Chapter 3.5,
8 commencing with Section 6250) for purposes of providing public access to records relating to
9 the District; and

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

16 WHEREAS, Pursuant to the Resolution to Establish, the Department of Public Works
17 ("Public Works") is the City agency responsible for coordination between the City and the
18 Owners' Association for the District; and

19 WHEREAS, Public Works has negotiated an agreement with the California nonprofit
20 corporation Dogpatch & Northwest Potrero Hill Green Benefit District, to, in good faith and
21 with diligence as the Owners' Association for the District, develop, implement, direct, manage,
22 administer, operate and ensure the timely provision of the District Programs ("Management
23 Agreement" or "Agreement"); and
24
25

1 WHEREAS, The Management Agreement is on file with the Clerk of the Board of
2 Supervisors in File No. 151189, which is hereby declared to be a part of this Resolution as if
3 set forth fully herein; and

4 WHEREAS, Pursuant to the Property and Business Improvement District Law of 1994,
5 the Resolution to Establish and the express terms of the Management Agreement, the
6 Agreement shall not be binding unless the Board of Supervisors approves the Agreement by
7 Resolution; and

8 WHEREAS, It is in the best interest of the City and the property owners within the
9 District for the City to enter into the Management Agreement with the Dogpatch & Northwest
10 Potrero Hill Green Benefit District, according to the terms and conditions set forth therein; and

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

14 WHEREAS, Said determination is on file with the Clerk of the Board of Supervisors in
15 File No. 151189 and is incorporated herein by reference; now, therefore, be it

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

17 Section 1. AUTHORIZATION TO EXECUTE CONTRACT. The Department of
18 Public Works is duly authorized to execute the Management Agreement on behalf of the City
19 and County of San Francisco.

20 Section 2. APPROVAL OF AGREEMENT. The Board of Supervisors hereby
21 approves the Management Agreement on file with the Clerk of the Board of Supervisors in
22 File No. 151189, which is hereby declared to be a part of this Resolution as if set forth fully
23 herein.

24 Section 3. AUTHORIZATION FOR ACTIONS CONTEMPLATED IN AGREEMENT.
25 The Department of Public Works, the Controller and all other Departments, City Officers and

1 Employees are authorized to take all actions, make determinations, exercise discretion, grant
2 or deny approval, and otherwise take all reasonable steps necessary for full performance of
3 the Management Agreement on behalf of the City and County of San Francisco according to
4 its terms.

5 Section 4. AUTHORIZATION FOR AMENDMENTS TO AGREEMENT. Subject to
6 disapproval by the Board of Supervisors within 30 days of submission to the Clerk of the
7 Board, the Department of Public Works may execute amendments to the Agreement on
8 behalf of the City and County of San Francisco that are consistent with the Management
9 District Plan, Resolution to Establish, official City policies and applicable law.