

File No. 190850

Committee Item No. 3

Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Committee

Date September 11, 2019

Board of Supervisors Meeting

Date \_\_\_\_\_

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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong

Date September 6, 2019

Completed by: Linda Wong

Date \_\_\_\_\_

1 [Sale of Transferable Development Rights - War Memorial Complex - 301 and 401 Van Ness  
2 Avenue]

3 **Resolution authorizing the Director of Property to sell up to 550,000 gross square feet**  
4 **of remaining transferable development rights (“TDR”) previously authorized from the**  
5 **War Memorial Complex, located at 301 and 401 Van Ness Avenue, at fair market value;**  
6 **and to execute and record Certificates of Transfer and to take such additional actions**  
7 **as may be necessary to effectuate one or more TDR transfers in accordance with**  
8 **Planning Code, Section 128.**

9  
10 WHEREAS, On April 27, 2003, the Board of Supervisors approved Ordinance No. 77-  
11 04 which, among other things, amended Planning Code, Section 128, to provide that a lot  
12 zoned P (public) may be a Transfer Lot for purposes of conveying Transferable Development  
13 Rights (“TDR”), provided that certain criteria outlined in Section 128(a)(4) are satisfied, and as  
14 further amended in Ordinance No. 87-07, approved by the Board of Supervisors on April 27,  
15 2007; and

16 WHEREAS, On May 10, 2007, the War Memorial Board of Trustees adopted  
17 Resolution No. 07-26, authorizing the City’s Director of Property to negotiate and enter into  
18 contracts for the sale of TDR from the War Memorial Complex, with the net proceeds from any  
19 such sales deposited to a segregated, interest bearing account established by the City’s  
20 Controller as a trust asset specifically for the War Memorial Complex; and

21 WHEREAS, On January 28, 2014, the Board of Supervisors approved Resolution No.  
22 16-14 (“TDR Resolution”), authorizing the Director of Property to (i) transfer up to 1,100,000  
23 gross square feet of TDR; and (ii) sell 550,000 gross square feet of those TDR (“First TDR  
24 Tranche”), from the War Memorial Complex (Assessor’s Parcel Block No. 0786A, Lot No. 001)  
25 at 301 and 401 Van Ness Avenue (the “Property”); and

1           WHEREAS, Upon sale of the First TDR Tranche, the TDR Resolution requires the  
2 Director of Property to submit supplemental enabling legislation to the Board of Supervisors to  
3 authorize the sale of the remaining 550,000 square feet of TDR (“Second TDR Tranche”); and

4           WHEREAS, Having sold the First TDR Tranche, the Director of Property, with  
5 recommendation from the Managing Director of the War Memorial Complex, seeks  
6 authorization to sell the Second TDR Tranche, at a minimum sales price set at fair market  
7 value; and

8           WHEREAS, Under the terms of Planning Code, Section 128, the transfer of TDR from  
9 the Property to an eligible transferee or an eligible Development Lot requires certain  
10 administrative actions by Director of Property, including, but not limited to, the recording of a  
11 Certificate of Transfer against the Property that states the amount of TDR available for  
12 transfer, and that the transfer of TDR permanently reduces the development potential of the  
13 Property by the amount of TDR transferred; and

14           WHEREAS, The proposed Second TDR Tranche transfer would involve soliciting  
15 interested buyers, negotiating applicable TDR Transfer Agreements (the “Agreements”), and  
16 establishing a market value transfer price of the TDR; and

17           WHEREAS, It is in the interest of the City to sell the Second TDR Tranche from the  
18 Property to effectuate rehabilitation and restoration of the War Memorial Complex, which may  
19 include payment of debt service in furtherance of said rehabilitation and restoration; now,  
20 therefore, be it

21           RESOLVED, That, provided that the criteria and requirements of Planning Code,  
22 Section 128, with respect to transfer of TDR are met, the Board of Supervisors authorizes the  
23 Director of Property to execute and record the Certificate of Transfer and to negotiate and  
24 execute Agreements and to take such other actions as reasonably required under Planning  
25 Code, Section 128, to effectuate the transfer of the Second TDR Tranche of up to 550,000

1 gross square feet of TDR from the Property to buyers on a rolling basis, upon satisfaction of  
2 the following conditions: (i) buyer has executed an Agreement (or Agreements), in form  
3 acceptable to the Director of Property and City Attorney, acquiring TDR at no less than fair  
4 market value; and (ii) the Agreements are acceptable to the Managing Director of the War  
5 Memorial Complex; and, be it

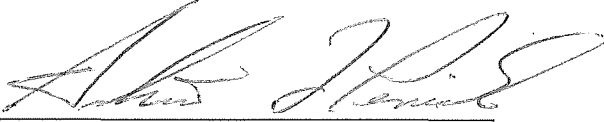
6 FURTHER RESOLVED, All funds from the sale of TDRs from the Property shall be  
7 placed into the segregated account established by the Controller as a trust asset to be used  
8 solely for the rehabilitation and restoration of the War Memorial Complex, (which may include  
9 payment of debt service in furtherance of said rehabilitation and restoration of the War  
10 Memorial Complex) in accordance with the Secretary of the Interior Standards; and, be it

11 FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,  
12 in the name and of behalf of the City and County, to execute and deliver the title to TDR to the  
13 buyer upon the closing of escrow in accordance with the terms and conditions of the  
14 applicable Agreement(s) as negotiated, and to take any all steps (including, but not limited to,  
15 the execution and delivery of any and all certificates, agreements, notices, consents, escrow  
16 instructions, closing documents and other instruments or documents) as the Director of  
17 Property deems necessary or appropriate, in consultation with the City Attorney, to  
18 consummate the sale of the TDR, or to otherwise effectuate the purpose and intent of this  
19 Resolution, such determination to be conclusively evidenced by the execution and delivery by  
20 the Director of Property of any such documents; and, be it

21 FURTHER RESOLVED, That the Director of Property will report to the Capital Planning  
22 Committee and the Board of Supervisors' Budget & Finance Committee at the end of each  
23 quarter to report and update the results of sales of City owned TDR, provided that if no sales  
24 take place in the previous quarter, no such report is required.

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RECOMMENDED:



Director of Property

<b>Item 3</b> <b>File 19-0850</b>	<b>Department:</b> Real Estate Division (RED), War Memorial (WAR)
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

- The proposed resolution would authorize the Director of Property to sell up to 550,000 square feet of remaining transferable development rights (TDR) previously authorized from the War Memorial Complex at fair market value.

**Key Points**

- The Transfer of Development Rights program allows the sale of unused development potential from preservation properties to development properties, generating income for the maintenance and preservation of historic buildings while allowing new developments to build higher. Each TDR unit is equal to one square foot of gross floor area.
- In January 2014, the Board of Supervisors approved the sale of up to 1,100,000 square feet of TDR from the War Memorial Complex, at a price of no less than \$25 per square foot. The approved resolution required the Director of Property to submit enabling legislation to the Board of Supervisors to reauthorize TDR sales immediately upon reaching sales of 550,000 square feet, and with such legislation to adjust the minimum sale price if necessary. The Real Estate Division (RED) has sold 529,642 square feet of TDR, and two potential buyers have committed to purchase the remaining TDR at \$30 per square foot, upon approval of the proposed resolution.

**Fiscal Impact**

- The TDR sale authorized by the proposed resolution would provide one-time gross revenues of approximately \$16,500,000.
- The revenues would be used to pay debt service on Certificates of Participation (COPs) issued for the War Memorial renovations completed in 2015. The City issued \$150,450,000 in COPs, incurring \$246,183,824 in debt. To date, the City has paid \$35,466,053 in debt service from the Capital Plan General Fund Debt Service, with a remaining payment balance of \$210,717,771.

**Policy Consideration**

- The proposed resolution authorizes the Director of Real Estate to sell up to 550,000 gross square feet of remaining TDR at fair market value. The proposed resolution should be amended to affirm the minimum TDR sale price of \$25 per square foot set by the original legislation in 2014 (File 13-1193, Resolution 016-14)

**Recommendations**

- Amend the proposed legislation to (a) affirm the minimum TDR sale price of \$25 per square foot set by the original legislation in 2014; and (b) require an annual written report to the Board of Supervisors detailing the sale of TDRs.
- Approve the proposed resolution as amended.

**MANDATE STATEMENT**

City Charter Section 9.118(c) states that any sale of real property owned by the City and County of San Francisco is subject to Board of Supervisors approval. In addition, Planning Code Section 128 specifies the definitions, requirements, and procedures for determining and cancelling Transfer of Development Rights (TDR) as well as the preservation, rehabilitation, and maintenance requirements.

**BACKGROUND**

In the mid-1980s, the City established the Transfer of Development Rights program to allow the sale of unused development potential from historic preservation properties to development properties. The goal was to generate income for the maintenance and preservation of historic buildings, while allowing new developments to build higher. Under Planning Code Section 128, owners of historic buildings located in C-3 Zoning Districts<sup>1</sup> may ask the Planning Department to certify their unused potential, known as transferable development rights (TDR).

Once certified, the TDR units may then be transferred via a sale to another property in any other C-3 district. As of 2007, TDRs may also be transferred from any lot zoned P (public), provided that the other conditions for transfer outlined in Section 128(a)(4) are met. The revenue generated from the TDR sale must be used to rehabilitate the historic building according to the U.S. Secretary of the Interior's Standards for Treatment of Historic Properties.

Each TDR unit is equal to one square foot of gross floor area. To calculate TDR available from an historic preservation property, the difference between the building's existing floor area ratio (FAR) and that allowed under zoning limits is determined. Development properties may obtain TDR to build beyond what is allowed under FAR limits and up to zoned height limits. They may not, however, use TDR to exceed or disregard height, bulk, and setback limits, sunlight access requirements, or other restrictions.

In January 2014, the Board of Supervisors approved the sale of up to 1,100,000 square feet of TDR from the War Memorial Complex, at a price of no less than \$25 per square foot (File 13-1193, Resolution 016-14). The approved resolution required the Director of Real Estate to submit enabling legislation to the Board of Supervisors to reauthorize TDR sales immediately upon reaching sales of 550,000 square feet. According to Mr. Andrico Penick, Director of Real Estate, the Real Estate Division (RED) has sold 529,642 square feet of TDR. Two potential buyers have committed to purchasing the remaining TDR, upon approval of the proposed resolution.

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<sup>1</sup> C-3 Zoning Districts are identified as downtown commercial districts and include Support (S), General (G), Office (O), or Retail (R) uses. In accordance with Section 128 of the Planning Code, any C-3 District parcel may be the recipient parcels for a TDR transaction.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would authorize the Director of Property (“Director of Real Estate”) to sell up to 550,000 square feet of TDR from the War Memorial Complex at fair market value.<sup>2</sup> According to Mr. Penick, two buyers have committed to buying the TDR at a price of \$30 per square foot. Once a buyer has executed a purchase and sale agreement and placed a nonrefundable deposit, the price is held for the buyer for 18 months. The buyer then completes the purchase once their ensuing development is approved. In the event that the sale of TDR does not close, the future pricing schedule is shown in Table 1 below.

**Table 1: TDR Pricing Schedule**

<b>Start Date</b>	<b>End Date</b>	<b>Price (Per Square Foot)</b>
1/1/2019	6/30/2019	\$30.00
7/1/2019	12/31/2019	\$32.50
1/1/2020	6/30/2020	\$35.00
7/1/2020	12/31/2020	\$37.50
1/1/2021	6/30/2021	\$40.00
7/1/2021	12/31/2021	\$42.50
1/1/2022	6/30/2022	\$45.00

According to Mr. Penick, the potential buyers agreed to the price of \$30 per square foot before July 1, 2019, when the price increased to \$32.50.

An appraisal conducted by Runde and Partners determined \$30 per square foot to be fair market value of the TDR.

The TDR sale proceeds would be used to pay debt service for the rehabilitation and restoration of the War Memorial Complex. According to Mr. John Caldon, War Memorial Managing Director, the project was completed in 2015 and had a budget of approximately \$177,424,002.<sup>3</sup> The project consisted of seismically retrofitting the Veterans Building, replacing and upgrading the mechanical plant, replacing and rehabilitating elevators, expanding restroom facilities, HVAC improvements, ADA upgrades, renovating the lobbies and other public spaces, renovating the Green Room and adding a new catering kitchen, renovating the Memorial Court driveway and sidewalks, new Herbst Theatre backstage dressing rooms and performers’ lounges, renovating office spaces on the first and third floors, and renovating veterans’ meeting rooms and offices on the second floor.

<sup>2</sup> 529,642 square feet of TDR have been sold to date, leaving a balance of 20,358 square feet of available TDR authorized for sale by the previous resolution. According to Mr. Penick, the agreements with the two potential buyers include flexibility in the square footage, so this remaining balance may be sold as well.

<sup>3</sup> According to Mr. Chris Muyo, War Memorial Chief Financial Officer, the San Francisco Opera contributed \$21,000,000, leaving the City’s contribution at \$156,424,002.



**FISCAL IMPACT**

The proposed resolution would allow the sale of up to 550,000 square feet of TDR at fair market value. At the agreed upon price of \$30 per square foot, the City would receive one-time gross revenues of \$16,500,000.

The TDR sale revenues would be used to pay debt service on the Certificates of Participation (COPs) issued for War Memorial renovations. According to Mr. Chris Muyo, War Memorial Chief Financial Officer, the City issued \$150,450,000 in COPs for the project, with total debt service payments over 30 years between 2016 and 2045 of \$246,183,824. The City has paid debt service of \$35,466,053 from the Capital Plan General Fund Debt Program, of which \$11,099,011 is attributed to past War Memorial TDR sales. The remaining payment balance is \$210,717,771.

**POLICY CONSIDERATION**

The proposed resolution authorizes the Director of Real Estate to sell up to 550,000 gross square feet of remaining TDR at fair market value. The proposed resolution should be amended to affirm the minimum TDR sale price of \$25 per square foot set by the original legislation in 2014 (File 13-1193, Resolution 016-14).

According to Mr. Penick, the potential buyers have agreed to a TDR sale price of \$30 per square foot. The pricing schedule shows an increase to \$32.50 per square foot on July 1, 2019, with subsequent increases of \$2.50 per square foot every six months through June 2022. According to Mr. Penick, the potential buyers could not execute a purchase and sale agreement or place a deposit because the TDR sale cannot be authorized until the proposed resolution is approved; therefore, the Real Estate Division has agreed to honor the agreed upon sale price of \$30 per square foot, even though the scheduled price has since increased to \$32.50.

**RECOMMENDATIONS**

1. Amend the proposed legislation to (a) affirm the minimum TDR sale price of \$25 per square foot set by the original legislation in 2014; and (b) require an annual written report to the Board of Supervisors detailing the sale of TDRs.
2. Approve the proposed resolution as amended.



London N. Breed, Mayor  
Naomi M. Kelly, City Administrator



Andrico Q. Penick  
Director of Real Estate

## MEMORANDUM

**DATE:** August 14, 2019

**TO:** Honorable Members of the Board of Supervisors  
Heather Green, Director of Capital Planning

**FROM:** Andrico Q. Penick, Director of Real Estate *APQ*  
*8/14/19*

**SUBJECT:** Resolution Authorizing the Director of Real Estate to sell the Second Tranche of Transferable Development Rights (TDR) from the War Memorial Complex

In approving Resolution No. 16-14 on January 20, 2014, File No. 131193, the Board of Supervisors authorized the Director of Real Estate to sell up to 1,100,000 gross square feet (or units) of TDR divided in two tranches of 550,000 units each from the War Memorial Complex at 301-401 Van Ness Avenue, at fair market value. The first tranche of TDR has been sold. Pursuant to Resolution No. 16-14, I am requesting authorization to sell the second tranche of TDR.

The conditions of approval in Resolution No. 16-14 were as follows:

- 1) Enabling legislation to reauthorize such TDR sales would be required upon reaching sales of 550,000 gross square feet (or units); and
- 2) Net sales proceeds (gross proceeds less escrow costs and commissions) shall be used solely for the rehabilitation and restoration of the War Memorial Complex, which may include payment of debt service in furtherance of said restoration efforts; and finally
- 3) That the Director of Real Estate shall report to the Capital Planning Committee and Board's Budget & Finance Committee at the end of each quarter to provide an update on the results of sale of City owned TDR, however the reporting requirement may be waived if no sales took place in the previous quarter.

When the Board provided the sales authorization in 2014, the TDR market had softened considerably, and sufficient TDR was available through other sources at lower prices than our approved appraised value. The previous Director, John Updike, worked with sources in the development community and patiently waited for the market to strengthen. These efforts bore fruit and resulted in initial sales at the no less than \$25 per TDR price floor set by the Board. I'm pleased to announce that I have picked up where the previous director left off and that the market for TDR still remains strong. Below is a chart detailing the sales transaction for the first tranche of TDR from January 1, 2017 through July 31, 2019:

SELLER	BUYER	PROJECT SITE	UNIT	PRICE	PSF	CLOSING
City	Pacific Eagle	1125 Market Street	25,157	\$ 628,925	\$25.00	30-May-17
City	CIM	246 First Street	8,550	\$ 213,750	\$25.00	23-Jun-17
City	Swig	633 Folsom Street	82,619	\$ 2,065,475	\$25.00	10-Aug-17
City	Macy's	235 Geary Street	3,000	\$ 75,000	\$25.00	23-Feb-18
City	St. Brides	300 Grant Avenue	3,000	\$ 75,000	\$25.00	7-Mar-18
City	Black Creek	655 Montgomery	3,000	\$ 75,000	\$25.00	24-Apr-18
City	Vornado	345 Montgomery	8,500	\$ 212,500	\$25.00	30-May-18
City	Blatteis	120 Stockton Street	3,000	\$ 75,000	\$25.00	4-Jun-18
City	Hines	542 Howard Street	100,000	\$ 2,500,000	\$25.00	10-Dec-18
City	Group I	950 Market Street	103,038	\$ 2,575,950	\$25.00	14-Dec-18
City	Boston Prop	725 Harrison Street	108,834	\$ 2,992,935	\$27.50	14-Dec-18
City	John Hancock	95 Hawthorne Street	50,800	\$ 1,397,000	\$27.50	21-Dec-18
City	Alexandria	88 Bluxome Street	30,144	\$ 904,320	\$30.00	15-Jul-19
<b>Total</b>			<b>529,642</b>	<b>\$13,790,855</b>		

As regards the second tranche of TDR, we already have two potential buyers committed and ready to purchase the remaining TDR, once the Board of Supervisors authorizes its sale. Consistent with our pricing schedule, these TDR would be sold at \$30 per unit, yielding one-time gross revenues of \$16,500,000. I will report on those closings, and any others, upon conclusion of the quarter in which the sale occurs.

In order to maintain a strong and consistent pricing structure and to encourage potential buyers of TDR to commit early, we have developed a pricing schedule as shown below:

PRICE	START DATE	END DATE
\$25.00	1/1/2017	6/30/2018
\$27.50	7/1/2018	12/31/2018
\$30.00	1/1/2019	6/30/2019
\$32.50	7/1/2019	12/31/2019
\$35.00	1/1/2020	6/30/2020
\$37.50	7/1/2020	12/30/2020
\$40.00	1/1/2021	6/30/2021
\$42.50	7/1/2021	12/31/2021
\$45.00	1/1/2022	6/30/2022

Under this pricing schedule, the unit price for a TDR increases \$2.50 every six months. However, once a potential buyer executes a purchase and sale agreement, the price will hold at the agreed upon

rate for up to 18 months. Buyers need to have a guaranteed source of TDR at the design stage even though they won't actually buy the TDR and use them until closer to actual construction. Buyers are required to put down a cash deposit which is nonrefundable if the buyer chooses not to proceed with the sale under circumstances within their control. All or a portion of the deposit is refundable if there is a default by the City or under circumstances beyond the parties' control. This pricing scheme: (1) allows a potential buyer to calculate with certainty the cost of the TDR purchase; (2) incentivizes the buyer to lock in early in order to avoid price increases; and (3) guarantees the availability of TDR. It is also advantageous to the City to get commitments early and to demonstrate to other potential buyers that TDR is selling at the current quoted price.

No CEQA or General Plan Referral were required for the initial legislation back in 2014. I recently checked with the Planning Department and they confirmed that CEQA and General Plan Referral were not required for this reauthorization. Although I do not believe it is required, an appraisal is underway to assist with future negotiations and will be complete prior to this item going to Board Committee.

cc:

Naomi Kelly, City Administrator

Ben Rosenfield, Controller

John Caldon, Managing Director, War Memorial & Performing Arts Center