

CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS  
BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee  
FROM: Budget and Legislative Analyst  
SUBJECT: September 18, 2019 Budget and Finance Committee Meeting



TABLE OF CONTENTS

Item	File		Page
1	19-0850	Sale of Transferable Development Rights – War Memorial Complex – 301 and 401 Van Ness Avenue .....	i
2	19-0902	Apply for Grant Application - United States Department of Housing and Urban Development - Continuum of Care Program - Not to Exceed \$51,175,386.....	1
3	19-0768	Contract Amendment - Heluna Health - Comprehensive Outreach and Case Management Programming - Not to Exceed \$39,133,942 .....	4
4 & 5	19-0878	Contract Amendment - XTech JV - Technology Marketplace - Not to Exceed \$44,000,000	
	19-0877	Contract Amendment - CCT Technologies, Inc. - Technology Marketplace - Not to Exceed \$23,000,000 .....	8
8	19-0704	Lease Agreement - Emporio Rulli, Inc. dba G.R. Chocolate Boutique - \$150,000 Minimum Annual Guarantee .....	11
9	19-0705	Lease and Operating Agreement - Smarte Carte Inc. - \$6,493,853 .....	14

**TABLE OF CONTENTS (continued)**

Item	File		Page
11 & 12	19-0895	Authorizing Certificates of Participation - Multiple Capital Improvement Projects - Not to Exceed \$94,600,000	
	19-0898	Appropriation - Certificates of Participation to the General Services Agency to Fund Site Acquisition Costs for the Hall of Justice Relocation Project - \$78,600,000 - FY2019-2020 .....	17
13 & 14	19-0896	Authorizing Certificates of Participation - Multiple Capital Improvement Projects - Not to Exceed \$62,000,000	
	19-0897	Appropriation - Certificates of Participation to the General Services Agency to Fund Tenant Improvement Costs for the Hall of Justice Improvement Project - \$62,000,000 - FY2019-2020 .....	23

<b>Item 1</b> <b>File 19-0850</b> <i>Continued from September 11, 2019 Budget and Finance</i>	<b>Department:</b> Real Estate Division (RED), War Memorial (WAR)
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objectives</b>	
<ul style="list-style-type: none"> <li>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.</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	
<b>Fiscal Impact</b>	
<ul style="list-style-type: none"> <li>The TDR sale authorized by the proposed resolution would provide one-time gross revenues of approximately \$16,500,000.</li> <li>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.</li> </ul>	
<b>Policy Consideration</b>	
<ul style="list-style-type: none"> <li>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)</li> </ul>	
<b>Recommendations</b>	
<ul style="list-style-type: none"> <li>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.</li> <li>Approve the proposed resolution as amended.</li> </ul>	

**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.