



OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
Deputy Controller
Anna Van Degna
Director of Public Finance

MEMORANDUM

TO: Honorable Members, Board of Supervisors

FROM: Ben Rosenfield, Controller
Anna Van Degna, Director of the Controller's Office of Public Finance

DATE: **Tuesday, December 1, 2020**

SUBJECT: Resolution Authorizing the Issuance of Judgement Obligation Bonds

Recommended Action

We respectfully request that the Board of Supervisors (the "Board") review and consider the adoption of the resolution ("Resolution") authorizing the sale and issuance of City and County of San Francisco Judgement Obligation Bonds (the "Judgement Obligation Bonds" or the "Bonds") in an aggregate principal amount not-to-exceed \$995,000,000 to finance or refinance an adverse judicial ruling related to 2018 Proposition C (defined below). The Resolution is expected to be introduced at the Board of Supervisors meeting on Tuesday, December 1, 2020. We respectfully request a hearing at the Budget and Finance Committee meeting on December 9, 2020.

Background

On June 5, 2018, voters approved a measure entitled *Commercial Rent Tax for Childcare and Early Education* ("2018 Proposition C") to levy a tax in the amount of 1% of gross receipts for warehouse space and 3.5% for other commercial properties to raise funds to pay for childcare and early childhood education ("Universal Childcare Program"). In 2018, it was estimated that 2018 Proposition C would raise \$146 million annually for the Universal Childcare Program, with 85% of funds designated for childcare and education among children from birth to five years old and 15% of funds available for general City purposes.

On August 3, 2018, the Howard Jarvis Taxpayers Association, the Building Owners and Managers Association of California, the California Business Properties Association, and the California Business Roundtable (collectively "Complainants") filed a "reverse validation" action in San Francisco Superior Court seeking to invalidate 2018 Proposition C, arguing that the special tax measure was not lawfully approved since it only received majority voter approval, and not the two-thirds voter approval required by the California Constitution. The City has since argued that the measure was lawfully adopted as a citizen initiative for which only majority approval is required, versus the two-thirds approval required if City lawmakers submitted the measure to the ballot. The Superior Court ruled in favor of the City and held

that 2018 Proposition C was approved by the requisite voter approval threshold since it was put on the ballot by citizen initiative. On June 30, 2020, a panel of three California First District Court of Appeal judges upheld the Superior Court's ruling holding that Proposition C was correctly approved by simple majority requirement rather than a two-thirds supermajority requirement.

On July 28, 2020, the Board passed a Charter Amendment initiative ordinance to place a measure on the November 3, 2020 ballot entitled "Proposition F, Business and Tax Regulation Charter Amendment" ("Proposition F"), that included, among other things, the imposition of contingent commercial and warehouse taxes if 2018 Proposition C were to be struck down. Proposition F was approved on November 3, 2020 by 67% of the voters and is now pending certification of the election by the City's Department of Elections. Given the court rulings in the City's favor and the recent passage of Proposition F, should the Board approve the Bonds, the Controller has determined to release previously impounded funds which are currently held in a Proposition C reserve. The purpose of the authorization for the Bonds is to provide a budgetary contingency plan given that the Complainants are still seeking review by the California Supreme Court. While the Controller believes the City will ultimately prevail no assurance can be made regarding the ultimate disposition by the Supreme Court.

The Current Plan of Finance

The proposed Resolution authorizes the sale and issuance of Bonds in an aggregate par amount not to exceed \$995,000,000 to refund, as necessary, any "obligation imposed by law" related to a future adverse outcome of the litigation discussed above. Based on current market conditions, the Office of Public Finance ("OPF") anticipates selling approximately \$990,420,000 in Bonds, with the precise cost of funds dependent on market conditions at the time of sale. The difference between the expected issuance amount below and the \$995,000,000 not to exceed amount provides flexibility for market fluctuations until the sale of the Bonds, including any increased deposits to the debt service reserve fund, the capitalized interest fund and/or possible additional delivery date expenses. Table 1 outlines anticipated sources and uses for the Judgement Obligation Bonds, based on estimates given market conditions as of November 2020.

Table 1: Estimated Sources & Uses of the Proposed Bonds

Sources:

<u>Estimated Bond Proceeds</u>	
Estimated Par Amount	\$990,420,000
Total Sources	\$990,420,000

Uses:

Net Proceeds for Judgement	\$843,280,000
Debt Service Reserve Fund	\$92,266,275
Capitalized Interest Fund	\$51,144,188
<u>Delivery Date Expenses</u>	
Cost of Issuance	\$1,253,487
Underwriter's Discount	\$2,476,050
Total Uses	\$990,420,000

In addition to the net proceeds for the judgement, additional proceeds from the sale of the Bonds may be appropriated to fund a Debt Service Reserve Fund and/or a Capitalized Interest Fund, if recommended by the Controller and the Director of the Controller’s Office of Public Finance (“OPF”). OPF estimates that approximately \$3.73 million will be allotted to cover costs associated with the issuance of the Bonds, assuming one or more series. This amount is preliminary and includes amounts for underwriter compensation as outlined separately above, legal fees, municipal advisory fees, trustee fees, rating agency fees, printing costs, and other issuance costs.

Based upon an estimated 6.55% taxable all-in true interest cost and an anticipated total par value of \$990,420,000, the total principal and interest payments over the assumed 20-year term of the Bonds are estimated to be approximately \$1.8 billion. For purposes of compliance with Section 5852.1 of the California Government Code, the Office of Public Finance will provide Good Faith Estimates to the Board prior to the issuance of the Bonds.

The Bonds

Under the proposed Resolution, the City would issue the Judgement Obligation Bonds only if the outcome of the litigation was adverse and the court ruled in favor of the Complainants. The City is taking these preliminary steps to set in motion the approval process required for this financing to take effect. Should the Board approve this mechanism for repayment of a judgement, the Controller would then be able to release the currently impounded funds. While the City would be able to issue its Judgement Obligation Bonds without a vote of the electorate, the City would nonetheless seek judicial validation of the bond issue to provide added assurance to would-be purchasers of the obligations.

Additional Information

Assuming a public sale of Judgement Obligation Bonds, the forms of the related financing documents—including the Preliminary Official Statement, Appendix A, Continuing Disclosure Certificate, Bond Purchase Contract, Indenture, Notice of Intention to Sell and other related documents will be the subject of a subsequent Board of Supervisors action.

Anticipated Legislative Timeline

Milestones	Dates*
• Board of Supervisors Introduction	December 1, 2020
• Budget & Finance Committee Hearing	December 9, 2020
• Board Considers Approval of the Resolution	December 15, 2020

**Please note that dates are estimated unless otherwise noted.*

Please contact Anna Van Degna (Anna.VanDegna@sfgov.org) at 415-554-5956 or Marisa Pereira Tully (Marisa.Pereira.Tully@sfgov.org) at 415-554-6902 if you have any questions. Your consideration of this matter is greatly appreciated.

cc: Angela Calvillo, Clerk of the Board of Supervisors
Harvey Rose, Budget and Legislative Analyst's Office
Severin Campbell, Budget and Legislative Analyst's Office
Ashley Groffenberger, Mayor's Office
Sophia Kittler, Mayor's Office
Michael Mitton, Controller's Office Budget & Analysis Division
Mark Blake, City Attorney's Office