

File No. 201333

Committee Item No. 13

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 9, 2020

Board of Supervisors Meeting

Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Linda Wong

Date December 4, 2020

Completed by: Linda Wong

Date _____

1 [Issuance of Judgment Obligation Bonds - Not to Exceed \$995,000,000]

2

3 **Resolution authorizing the issuance of not to exceed \$995,000,000 aggregate principal**
4 **amount of City and County of San Francisco Judgment Obligation Bonds to pay the**
5 **costs of a potential judgment associated with litigation related to Proposition C (2018)**
6 **(Commercial Rent Tax for Childcare and Early Education), subject to specified**
7 **conditions, as defined herein.**

8

9 WHEREAS, The City is authorized pursuant to Articles 10 and 11 (commencing with
10 Section 53570) of Chapter 3 of Division 2 of Title 5 of the California Government Code (“Act”)
11 to issue refunding bonds for the purpose of refunding any evidence of indebtedness of the City;
12 and

13 WHEREAS, On June 5, 2018, voters approved a measure entitled “Commercial Rent
14 Tax for Childcare and Early Education” (“Proposition C”) to levy a tax in the amount of one-
15 percent (1%) of gross receipts for warehouse space and three and one-half percent (3.5%) for
16 other commercial properties to raise funds to pay for childcare and early childhood education
17 (“Universal Childcare Program”); and

18 WHEREAS, It was estimated that Proposition C would raise \$146 million annually for
19 the Universal Childcare Program, with 85 percent of funds designated for childcare and
20 education among children from birth to five years old and 15 percent of funds available for
21 general City purposes; and

22 WHEREAS, On August 3, 2018, the Howard Jarvis Taxpayers Association, the Building
23 Owners and Managers Association of California, the California Business Properties
24 Association, and the California Business Roundtable (collectively “Complainants”) filed a
25 “reverse validation” action in San Francisco Superior Court seeking to invalidate Proposition

1 C, arguing that the special tax measure was not lawfully approved since it only received
2 majority voter approval, and not the two-thirds voter approval required by the California
3 Constitution; and

4 WHEREAS, The City argued the measure was lawfully adopted as a citizen initiative
5 for which only majority approval is required, versus the two-thirds approval required if City
6 lawmakers submitted the measure to the ballot; and

7 WHEREAS, The Superior Court ruled in favor of the City and held that Proposition C
8 was approved by the requisite voter approval threshold since it was put on the ballot by citizen
9 initiative, and on June 30, 2020, a panel of three California First District Court of Appeal
10 judges upheld the Superior Court’s ruling holding that Proposition C was correctly approved
11 by simple majority requirement rather than a two-thirds supermajority requirement; and

12 WHEREAS, The Controller, as a prudent budgetary measure, had placed Proposition
13 C tax revenues on reserve; and

14 WHEREAS, On July 28, 2020, this Board of Supervisors passed a Charter Amendment
15 initiative ordinance to place a measure on the November 3, 2020, ballot entitled “Proposition
16 F, Business and Tax Regulation Charter Amendment” (“Proposition F”), that included, among
17 other things, the imposition of contingent commercial and warehouse taxes if Proposition C is
18 struck down; and

19 WHEREAS, Proposition F was approved by the voters on November 3, 2020, by 67
20 percent of the voters, pending certification of the election by the City’s Department of
21 Elections; and

22 WHEREAS, Given the court rulings in the City’s favor and the recent passage of
23 Proposition F, the Controller has determined to release funds in the Proposition C reserve
24 notwithstanding the fact that Complainants will seek review by the California Supreme Court;
25 and

1 WHEREAS, For the purpose of refunding the City’s obligations evidenced by the
2 Judgment, the City has determined to issue its Judgment Obligation Bonds, Series 2021
3 (“Bonds”), in an aggregate principal amount not exceeding the sum of \$995,000,000, with such
4 amount to be applied to (a) pay the Judgment Obligation (as defined below), including the
5 reimbursement of the City for any advances or interfund borrowings made to pay such
6 Judgment Obligation (as defined below) in anticipation of the issuance of the Bonds, (b) fund a
7 debt service or other similar reserve and (c) pay the costs of issuance of the Bonds (including
8 underwriter’s discount); and

9 WHEREAS, As a prudent budgetary measure, it is advisable nonetheless to authorize
10 the issuance of Judgment Obligation Bonds in an amount not to exceed \$995,000,000 given
11 the pendency of the Proposition C litigation before the California Supreme Court, and the
12 potential adverse effect on the City’s budget if the City were to ultimately lose the Proposition
13 C litigation (herein the “Judgment Obligation”); and

14 WHEREAS, The Board of Supervisors has determined to authorize the issuance of City
15 and County of San Francisco Judgment Obligation Bonds, Series 2021 (or such other
16 designation determined by the Controller), in an aggregate principal amount not exceeding the
17 sum of \$995,000,000, with such amount to be applied to (a) pay the Judgment Obligation,
18 including the reimbursement of the City for any advances or interfund borrowings made to pay
19 such Judgment Obligation in anticipation of the issuance of the Bonds, (b) fund a debt service
20 or other similar reserve and (c) pay the costs of issuance of the Bonds (including underwriter’s
21 discount); and

22 WHEREAS, The issuance of the Bonds can be undertaken without a voter approval as
23 an obligation imposed by law in accordance with long-standing California Supreme Court
24 precedent *City of Long Beach v. Lisenby*, 180 Cal. 52 (1919) (holding that a tort judgment
25 does not create a prohibited debt notwithstanding the liability would be paid from a

1 subsequent fiscal year), although the City may determine to validate the matter under
2 California Civil Code Section 860 et seq.; and

3 WHEREAS, The City is authorized to cause the issuance of the Bonds pursuant to the
4 Charter and other applicable provisions of the laws of the State of California; now, therefore
5 be it resolved as follows:

6 Section 1. All of the recitals herein are true and correct.

7 Section 2. Approval and Authorization of Bonds. The Controller is hereby authorized
8 and directed to cause the issuance of Bonds to (a) pay the Judgment Obligation, including the
9 reimbursement of the City for any advances or interfund borrowings made to pay such
10 Judgment Obligation in anticipation of the issuance of the Bonds, (b) fund a debt service or
11 other similar reserve and (c) pay the costs of issuance of the Bonds (including underwriter's
12 discount); is hereby approved. The total principal amount of the Bonds shall not exceed
13 \$995,000,000. The authorization to issue the Bonds is subject to the following conditions (i)
14 the City shall have suffered an adverse ruling by the California Supreme Court with respect to
15 the Proposition C litigation and the Controller shall have determined that the amount of
16 exposure exceeds City budgetary resources; (ii) the Controller shall have returned to this
17 Board with substantially final financing documents, including the form of Preliminary Official
18 Statement and other financing documents, for its review and approval, as such documents
19 shall have been reviewed by the City Attorney.

20 The Controller's Director of Public Finance ("Director") is hereby authorized to cause
21 the sale of Bonds authorized under the terms of this resolution by negotiated sale pursuant to
22 one or more purchase contracts as the Director may negotiate with such underwriter selected
23 by the Director pursuant to competitive process. In the event of a negotiated sale of any series
24 of Bonds as provided hereunder, the underwriter's discount shall not exceed one percent
25 (1.0%) of the par amount thereof.

<p>Item 13 File 20-1333</p>	<p>Department: Controller’s Office of Public Finance</p>
<p>EXECUTIVE SUMMARY</p>	
<ul style="list-style-type: none"> • The proposed resolution authorizes the issuance of not to exceed \$995,000,000 aggregate principal amount of City and County of San Francisco Judgment Obligation Bonds to pay the costs of a potential judgment associated with litigation related to Proposition C (2018) (Commercial Rent Tax for Childcare and Early Education), subject to specified conditions. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The California Constitution defines the debt limit for local jurisdictions, in which indebtedness or liabilities entered into for the year cannot exceed the local jurisdiction’s revenues for the year. An exception to the debt limit is the “Obligation Imposed by Law Exception”, in which local jurisdictions may issue debt, such as judgment obligation bonds, to settle legal obligations. • Proposition C was approved by 50.9 percent of San Francisco voters in 2018. A lawsuit was filed stating that Proposition C required two-thirds voter approval. In June 2019, the San Francisco Superior Court ruled that Proposition C, as a citizen’s initiative, was correctly certified by City officials with 50 percent approval. This decision could be appealed to the California Supreme Court. • Given the court decision, and passage of Proposition F in November 2020, which created a new general tax that would go into effect if the original Proposition C were to be overturned, the Controller plans to release revenues generated by Proposition C from Controller’s Reserve. The proposed resolution approves the issuance of the Judgment Obligation Bonds as a “prudent budgetary measure” in the event that the California Supreme Court could rule against the City and require repayment of Proposition C taxes. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The Controller estimates issuing \$990.4 million in Judgment Obligation Bonds, of which \$843.3 million would repay previously collected taxes, and the balance would be reserves and financing costs. The City collected \$269.7 million in Proposition C revenues through June 2020 and estimates collection of \$573.6 million through June 2023, totaling \$843.3 million. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • Approval of the proposed resolution is a preliminary approval of the proposed Judgment Obligation Bonds. The Office of Public Finance would only issue the Bonds in the event of the California Supreme Court overturning the Tax on Commercial Rents for Childcare and Early Education Board of Supervisors approval of the Preliminary Official Statement and other financing documents would be required at a future date. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed resolution to add a “whereas” clause stating that the Office of Public Finance will provide Good Faith Estimates of the bond financing costs to the Board prior to the issuance of the Bonds in compliance with Section 5852.1 of the California Government Code. • Approve the proposed resolution as amended. 	

MANDATE STATEMENT

City Charter Section 9.106 provides for Board of Supervisors approval for the issuance of bonds in accordance with the State Constitution. The State Constitution allows for the issuance of bonds to pay for obligations imposed by law (e.g. legal judgments).

The California Government Code authorizes the City to issue refunding bonds for the purpose of refunding any evidence of indebtedness of the City.

BACKGROUND

Judgment Obligation Bonds

Article XVI, Section 18 of the California Constitution defines the debt limit for local jurisdictions, in which indebtedness or liabilities entered into for the year cannot exceed the local jurisdiction's revenues for the year. Local jurisdictions may exceed the debt limit if the issuance of bonds is approved by two-thirds of voters. An exception to the debt limit is the "Obligation Imposed by Law Exception". According to the California Debt and Advisory Commission, the constitutional debt limit is designed to address only discretionary actions, and therefore voter approval of bonded debt is not required if the debt is to pay the local jurisdiction's legal obligations. The Obligation Imposed by Law Exception applies if the payment of a liability is imposed or mandated by law (e.g. a court judgment). According to the California Debt and Advisory Commission, because the case law is not well developed, this exception generally requires a validation proceeding. The Obligation Imposed by Law Exception is generally applied to pension obligation bonds and judgment obligation bonds.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the issuance of not to exceed \$995,000,000 aggregate principal amount of City and County of San Francisco Judgment Obligation Bonds to pay the costs of a potential judgment associated with litigation related to Proposition C (2018) (Commercial Rent Tax for Childcare and Early Education), subject to specified conditions.

Proposition C (June 2018)

The California Constitution requires two-third voter approval for taxes imposed by a local jurisdiction for special purposes. The California Supreme Court in 2017 (California Cannabis Coalition v. City of Upland) ruled that the Constitution provision did not apply to citizen initiatives for the holding of special elections but did not specifically address voter approval requirements.

Proposition C, the Commercial Rent Tax for Childcare and Early Education, was a citizen initiative imposing taxes on commercial rents for the purpose of funding childcare and early education programs. The proposition was approved by 50.87 percent of the votes in the June 2018 election.

In June 2019, the San Francisco Superior Court ruled that Proposition C (June 2018) was correctly certified by City officials with 50 percent rather than two-third voter approval.¹ This decision was upheld by the California First District Court of Appeals, which could be appealed to the California Supreme Court.

Proposition F (November 2020)

San Francisco voters approved Proposition F, revising the gross receipts tax structure, in November 2020 with 67.48 percent of the vote. Proposition F also created a new general tax, equal to the Commercial Rent Tax for Childcare and Early Education approved by Proposition C in June 2018, which would go into effect if the original Proposition C were to be overturned on appeal to the California Supreme Court. Revenues from the new general tax would be used to pay back businesses that had paid the Commercial Rent Tax for Childcare and Early Education² and provide a revenue stream going forward.

Proposed Judgment Obligation Bonds

Commercial Rent Tax for Childcare and Early Education revenues have been placed on Controller's Reserve pending the outcome of litigation. According to the proposed resolution, the Controller now plans to release these funds, although the litigation challenging the certification of Proposition C could be appealed to the California Supreme Court.

The proposed resolution approves the issuance of the Judgment Obligation Bonds as a "prudent budgetary measure" in the event that the California Supreme Court could rule against the City and require businesses to be repaid for Commercial Rent Tax for Childcare and Early Education payments. The proposed resolution authorizes the Controller to issue bonds to:

- Pay the Judgment Obligation, including the reimbursement of the City for any advances or interfund borrowings made to pay such Judgment Obligation in anticipation of the issuance of the Bonds;
- Fund a debt service or other similar reserve; and
- Pay the costs of issuance of the Bonds (including underwriter's discount).

According to the proposed resolution, the Judgment Obligation Bonds would only be issued if:

- The California Supreme Court rules against the City's certification of Propositions C, and the Controller determines that the City has insufficient funds to pay the Obligation; and
- The Board of Supervisors approves the financing documents, including the Preliminary Official Statement, at a future date and prior to issuance of the Bonds.

¹ The 2017 San Francisco Superior Court ruling also applied to the November 2018 Proposition C, which imposed a gross receipts tax for homeless services. Proposition C was approved with 61.34 percent of the vote. The California First District Court of Appeals upheld the Superior Court ruling in June 2020, and the California Supreme Court subsequently declined to hear the appeal on the November 2018 Proposition C.

² Businesses were required to pay the tax pending the outcome of litigation, but tax revenues have been placed on Controller's Reserve.

Validation Proceedings

As noted above, because the case law is not well-developed regarding judgment obligation bonds, which are an exception to the California Constitution’s debt limit requirements, issuance of these bonds generally requires a validation proceeding. The proposed resolution authorizes City officials to bring a validation action under Section 860 of the California Code of Civil Procedure to determine the legality and validity of the proposed Judgment Obligation Bonds.

Negotiated Sale

The proposed resolution authorizes the Director of Public Finance to sale the Judgment Obligation Bonds through a negotiated rather than competitive sale. According to Ms. Anna Van Degna, Director of Public Finance, the Controller’s Office is proposing a negotiated rather than competitive sale because a negotiated sale provides an opportunity for issuers to engage with underwriter(s) and investors during a “pre-marketing” period ahead of the bond sale. According to Ms. Van Degna, given the untraditional debt structure of the proposed bonds, this additional market dialogue may help expand the investor universe and result in higher demand for the bonds. The decision to issue bonds via a negotiated sale would be based upon a recommendation by the City’s Municipal Advisor. Additionally, the underwriter(s) would need to be selected as part of a competitive Request for Proposals (RFP) process.

FISCAL IMPACT

According to Ms. Van Degna, the Office of Public Finance estimates issuing \$990.4 million in Judgment Obligation Bonds, shown in Table 1 below, which is approximately \$4.6 million less than the not-to-exceed amount of \$995.0 million in the proposed resolution. The difference of \$4.6 million is due to potential change in interest rates at the time of the sale.

Table: Estimated Sources and Uses of the Proposed Bonds

Sources	
Estimated Par Amount	\$990,420,000
Uses	
<i>Judgment Payments and Reserves</i>	
Net Proceeds for Judgment	\$843,280,000
Debt Service Reserve Fund ^a	92,266,275
Capitalized Interest Fund ^b	<u>51,144,188</u>
Subtotal	\$986,690,463
<i>Bond Issuance Costs</i>	
Cost of Issuance ^c	\$1,253,487
Underwriter’s Discount ^d	<u>2,476,050</u>
Subtotal	\$3,729,537
Total Uses	\$990,420,000

Source: Controller’s Office

^a The debt service reserve fund equals one year’s principal and interest payment on the bonds.

^b A capitalized interest fund would be used in order to cover a partial year’s worth of interest, in the event that the Judgement Obligation Bonds are issued on a schedule that doesn’t align with the City’s annual budgeting process.

^c Costs of issuance include bond counsel, financial advisers, rating agencies, and other costs.

^d The underwriter's discount is the difference of the price paid by the underwriter and the price paid by investors, which according to the proposed resolution would not exceed 1 percent of the par amount (or \$9,904,200).

Judgment Obligation Bonds proceeds of \$843.3 million would repay businesses for their Commercial Rent Tax for Childcare and Early Education payments, which went into effect in January 2019. The City collected \$269.7 million in Commercial Rent Tax for Childcare and Early Education revenues through June 2020 and estimates additional collection of \$573.6 million through June 2023, totaling \$843.3 million.

According to Ms. Van Degna, total estimated principal and interest payments over the 20-year term of the proposed Bonds is \$1.8 billion. Annual estimated debt service is approximately \$90 million, to be paid from the City's General Fund.

POLICY CONSIDERATION

The proposed issuance of the Judgment Obligation Bonds would be issued in accordance with the Obligation Imposed by Law Exception to the California Constitution's debt limit. According to the proposed resolution, given the court rulings in the City's favor and the recent passage of Proposition F, the Controller plans to release from Controller's Reserve up to \$269.7 million in Tax on Commercial Rents for Childcare and Early Education revenues collected through June 2020; future payments of the Tax on Commercial Rents for Childcare and Early Education would not be placed on reserve. The Office of Public Finance is requesting authority to issue Judgment Obligation Bonds at this time "as a prudent measure" to refund the City's obligations if the California Supreme Court were to overturn the Tax on Commercial Rents for Childcare and Early Education. The Office of Public Finance would only issue the Bonds in the event of the California Supreme Court overturning the Tax on Commercial Rents for Childcare and Early Education, and after approval by the Board of Supervisors of the associated Bond documents.

Approval of the proposed resolution is a preliminary approval of the proposed Judgment Obligation Bonds. Board of Supervisors approval of the Preliminary Official Statement and other financing documents would be required at a future date. According to the memorandum from the Office of Public Finance to the Board of Supervisors, the Office of Public Finance will provide Good Faith Estimates of the bond financing costs to the Board prior to the issuance of the Bonds in compliance with Section 5852.1 of the California Government Code.

RECOMMENDATIONS

- Amend the proposed resolution to add a "whereas" clause stating that the Office of Public Finance will provide Good Faith Estimates of the bond financing costs to the Board prior to the issuance of the Bonds in compliance with Section 5852.1 of the California Government Code.
- Approve the proposed resolution as amended.



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