

LEGISLATIVE DIGEST

[Pier 70 plan and lease approvals; General Fund financing for Pier 70 waterfront improvements; transfer of funds according to agreements between the Port Commission and other departments; priorities for use of Port funds]

A proposal to authorize the Board of Supervisors to approve a Pier 70 financial and land use plan; authorize a mechanism for the City to appropriate General Fund revenues in an amount up to 75% of the projected hotel and payroll taxes attributable to new development at Pier 70 to finance waterfront improvements; waive Board approval of leases consistent with the approved Pier 70 plan; require the City to appropriate funds for Board-approved agreements between City departments and the Port Commission; and, update the priorities for use of Port revenues.

Summary of Changes to Proposed Charter Amendment

This Legislative Digest reflects changes to the proposed Charter Amendment submitted to the Clerk of the Board of Supervisors on June 10, 2008. A summary of the changes to the legislation is as follows:

- Substitution of the term "that exceed" for the word "beyond" in the last sentence of Section B7.310(b) to clarify the legislation;
- Substituting throughout the legislation the proper name of the Secretary of the Interior's guidelines, "Secretary of the Interior's Standards for the Treatment of Historic Properties," for the pre-existing term "Secretary of the Interior Standards for Historic Preservation;" and
- Modifying Sections B7.310(h)(2) and (3) to state that conditions, where applicable, to a lease being deemed approved under Section 9.118 of the Charter are that the lease bind the lessee to obtaining a finding of consistency from the National Park Service and/or the State Historic Preservation Office and a permit from the Bay Conservation and Development Commission, instead of binding both the City and the lessee to perform these obligations.

Existing Law

The Port generally finances improvements to Port property with Port revenues, grants, federal historic tax credits, and public-private development projects. Other than funds approved by voters in February 2008 for waterfront parks on Port property (Proposition A), the City does not currently provide funds to the Port from City tax revenues for waterfront improvements.

The Port and other City departments may enter into memoranda of understanding regarding their various activities. The City is not obligated to appropriate funds for the expenditures under such agreements, although departments, may annually request that the City, in its discretion, appropriate such funds

Pursuant to Section 9.118 of the Charter, except for maritime leases, the Port Commission must submit all leases of real property to the Board of Supervisors for approval if the lease has a term of ten years or more, including options to extend, anticipated revenue of one million dollars or more to the City and County, or requires anticipated expenditures by the City of ten million dollars or more.

The Charter specifies the purposes for which revenues obtained from Port properties may be used, and prioritizes those uses.

Amendments to Current Law

A. Pier 70 Plan

1. The Plan

Under this proposal, the Port Commission may submit to the Board of Supervisors for the Board's approval, a financial and land use plan or plans for an area or areas within Pier 70 of the port (each a "Pier 70 Plan") that the Port intends to improve. The plan will include a description of the boundaries of the area within Pier 70 to be improved (the "Pier 70 Waterfront District"), and projections of financing required for the waterfront improvements in addition to any property tax increment financing. Waterfront Improvements include rehabilitation of existing historic resources consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, seismic strengthening of existing structures, environmental remediation and/or mitigation consistent with applicable regulations and/or a plan approved by a regulatory agency with jurisdiction over the contaminated area, construction and landscaping of waterfront open space, including natural shoreline habitat, construction of utility infrastructure necessary to achieve compliance with environmental performance standards that exceed applicable building code requirements, and the construction or rehabilitation of maritime facilities.

The Clerk of the Board of Supervisors will refer the plan to the Controller. The Controller and the Tax Collector, in consultation with the Department of Real Estate and Port Commission, will report to the Board on the taxes received from the payroll expense taxes and hotel taxes received by the City from businesses and any hotels in the Pier 70 Waterfront District in the full fiscal year immediately preceding the submission of the plan to the Board. The report will also include a projection of the annual increases in payroll and hotel taxes that would accrue to the City's General Fund each year, for the next twenty years, starting with the issuance of a certificate of occupancy related to a lease selected by the Port in the Pier 70

Waterfront District, based on assumptions about new lease and tax revenue from development of uses in the Pier 70 Waterfront District.

The Board of Supervisors may approve the Pier 70 Plan while deciding not to approve the financing plan proposed in the plan. The Board may approve the financing plan if the Board finds that the lease revenues for a period of twenty years, commencing with the Port's projected date of issuance of a certificate of occupancy for a lease identified by the Port, and property tax increment financing from development of the Pier 70 Waterfront District is insufficient to fund the proposed improvements in the district.

2. Obligation to Appropriate Funds

If the Board of Supervisors approves the financing plan contained in the Pier 70 Plan, the City must appropriate to the Port discretionary General Fund revenues in an amount necessary to pay debt service on any indebtedness issued by the Port Commission to finance proposed improvements in the Pier 70 Waterfront District or to fund any obligation the Port Commission has to pay for the improvements. The amount appropriated by the City will not exceed 75% of the projected increase in payroll and hotel tax for the district during the fiscal year in which the Port Commission is obligated to pay debt service or other consideration for waterfront improvements and for each fiscal year thereafter until the earlier of: (1) the date the Controller certifies that the Port Commission has retired all indebtedness or fully paid for the improvements or (2) twenty fiscal years. The amount to be appropriated by the Board of Supervisors will not be adjusted based on the taxes actually accruing to the City from the district.

Before issuing any indebtedness for financing the improvements or assuming the responsibility to pay for the improvements, the Port Commission must approve by resolution a capital budget for the improvements and find that Port revenues and property tax increment from private investments or development within the area to be improved are insufficient to finance the improvements.

B. Approval of Leases

If the Board of Supervisors approves the Pier 70 Plan, the Board's approval will constitute approval of any lease required for the development of the Pier 70 Waterfront District if conditions specified in the proposal, including the following are satisfied: (i) the Controller, in consultation with the Department of Real Estate finds that the lease is consistent with the plan; and, if applicable for purposes of the receipt of federal historic tax credits, (ii) the lease requires the lessee to (a) obtain from the National Park Service and/or the State Historic Preservation Office a finding of consistency of the federally-subsidized historic rehabilitation project(s) authorized by the lease with the Secretary of Interior's Standards for the Treatment of Historic Properties, and (b) obtain a permit from the Bay Conservation and Development Commission for the improvement and maintenance of the 100-foot shoreline band along Pier 70 in the premises of the lease. Approval of the Pier 70 Plan, therefore,

would waive the requirement for the Board of Supervisors' approval of the lease pursuant to Section 9.118 of the City Charter, subject to these conditions.

C. Agreements with Other City Departments

Under this proposal, the Mayor may, submit to the Board of Supervisors for approval an interagency agreement between the Port Commission and other department or departments of the City, approved by the Port Commission by resolution, that requires the department(s) to expend funds or transfer funds to the Port Commission, or requires the Port Commission to transfer funds to the department(s). If the Board of Supervisors approves the agreement by resolution, the City must appropriate funds sufficient to fund the expenditure or transfer under the agreement. The parties to the agreement may not modify the agreement to affect the amount to be expended or transferred without the approval of the Board of Supervisors by resolution.

D. Priority Uses

The proposed legislation updates the priority of uses for Port revenues.

Background Information

A. Waterfront Land Use Plan

In 1997, the Port Commission approved the Port's first Waterfront Land Use Plan ("Waterfront Plan") in response to a 1990 voter-approved proposition (Proposition H). After the Waterfront Plan was adopted, the Planning Commission and the Board of Supervisors adopted conforming amendments to the City's General Plan, Planning Code and Zoning Map to align City and Port land use and urban design policies. In 2001, the Bay Conservation and Development Commission adopted its Special Area Plan for the San Francisco Waterfront and the Port Commission approved conforming amendments to the Waterfront Plan.

The Waterfront Plan identifies eleven "mixed-use development opportunity areas" that represent opportunities for mixed use development along the waterfront, primarily as a means of rehabilitating historic Port facilities through adaptive reuse. Pier 70 is a mixed use opportunity area defined in the Waterfront Plan.

B. Pier 70

Pier 70 is an approximately 65-acre brownfields site, located on San Francisco's Central Waterfront, generally between 18th and 22nd Streets, east of Illinois Street. The Potrero Power Plant is located immediately to the south of the site. For over 150 years, some portion of Pier 70 has been in use for ship building and repair, or steel production, as well as for other activities supporting heavy industrial uses.

Pier 70 is where the late 19th century Union Iron Works began and later evolved into the Bethlehem Steel Shipyard. It is the oldest continuously operating shipyard on the west coast. Currently the Port's ship repair operation occupies a 16-acre portion of the site run by BAE Systems, under lease from the Port. Pier 70 retains a strong historic character, established by a large collection of historic architectural resources and artifacts throughout the site.

The State Office of Historic Preservation determined that the site's approximately 40 historic buildings, structures, and features are eligible for the National Register collectively as contributors to a Pier 70 historic district. Given the extraordinary historic value of this site, the Port Commission designated a substantial portion of the site as a Development Opportunity Area in the Waterfront Land Use Plan ("Waterfront Plan"), specifically for the purpose of supporting the Port's effort to preserve the Union Iron Works and Bethlehem Administration buildings along 20th Street. Many of the historic resources at Pier 70, including the Union Iron Works and Bethlehem Administration building, are condemned and are deteriorating.

C. Prior Pier 70 Development Efforts

In 2001, the Port issued two requests for proposals (RFPs), the "Arts Project RFP" and the "Mixed Use RFP," for development projects within an approximately 14-acre Mixed Use Opportunity Area at Pier 70 in the Southern Waterfront near Illinois and 20th Streets. The "Arts Project RFP" called for a non-profit arts project on 1.5 acres; the "Mixed Use RFP" called for a mixed-use development project on the remaining 12 acres.

Port staff worked closely with its Pier 70 Community Advisory Group to develop goals and objectives for each project RFP. The Port received responses from only two developers. The Port Commission authorized staff to enter into exclusive negotiations with the two respondents. The parties commenced a site planning process to achieve optimal development plans for both projects within the Opportunity Area. In 2002, the Port and its development partners elected to terminate exclusive negotiations for a variety of reasons, including financial and land use considerations.

D. Pier 70 Preferred Master Planning

Since late 2006, the Port of San Francisco has been conducting a public planning process to develop a master plan for Pier 70. The objective of the master plan is to set forth a concept and approach for the reuse and infill development of the Pier 70 area that is supported by the public, and which addresses and reconciles numerous regulatory, economic, environmental, maritime, historic preservation, open space and shoreline access issues. The Port's commitment to undertaking this project now is driven by the desire to preserve and rehabilitate as many buildings as feasible, while preserving the viability of ship repair operations now and over the long-term and, at the same time creating sufficient economic opportunities to attract developers to carry out adaptive reuse and infill development at Pier 70. The Preferred Master Plan is scheduled to be completed in late 2008 and will be followed by a competitive solicitation for one or more development partners for Pier 70.

The Pier 70 Preferred Master Plan will:

- Develop an economically viable land use program compatible with the ship repair industry;
- Define historic district(s) that can be nominated and ultimately listed on the National Register of Historic Places;
- Identify new waterfront public access and open space;
- Be integrated with the urban design and use program of the larger Central Waterfront area;
- Identify a financing strategy for required infrastructure improvements, including public financing mechanisms; and
- Include a development phasing schedule that allows existing interim uses to remain on site until redevelopment occurs.

E. Need for Proposed Changes

The adaptive reuse of Pier 70 has the potential to become the next great neighborhood in San Francisco. There are numerous regulatory and financial challenges to the reuse of the site.

Pier 70 has been used for heavy industrial purposes for 150 years and is known to be contaminated by heavy metals, hydrocarbons and other pollutants. The Port is currently conducting a site investigation with the aid of federal funding, with results expected in late 2008.

The historic resources at Pier 70 are threatened by the elements and by seismic risk. The largest and most significant were constructed with unreinforced masonry; a large temblor could decimate some of the most culturally-significant structures at the site.

The combination of a brownfields site, a portion of which is built on Bay fill, numerous deteriorating historic structures and aging infrastructure that requires replacement means that Pier 70 redevelopment will require extraordinary investment, possibly in excess of \$1 billion. Lease revenues and property tax increment from development of Pier 70 are unlikely to be sufficient to achieve the goals of the Pier 70 Master Plan.

Approvals for development at Pier 70 will take years. Though the timing and sequence may vary, and could require multiple considerations of some items, major approvals will include at least the following actions:

- The Port Commission will approve issuance of one or more RFPs and selection of one or more development partners for exclusive negotiations;
- Chapter 29 of the Administrative Code requires the Board of Supervisors to approve the *fiscal feasibility* of certain publicly-funded projects whose cost exceeds twenty-five million dollars, prior to commencement of environmental review;
- The San Francisco Planning Department, Major Environmental Analysis Division will conduct a review of environmental impacts of the proposed project and project alternatives consistent with the California Environmental Quality Act (CEQA) and such CEQA analyses are subject to appeal to the Board of Supervisors;
- If required, a regulatory agency with jurisdiction over the site will approve a site remediation or site management plan, or the equivalent, for the relevant portion of Pier 70, where the Port or a former owner, occupant, or operator is the primarily responsible party;
- The California State Lands Commission will opine on the consistency of any uses with the public trust for commerce, navigation and fisheries where required and review and approve any proposed relocation of the public trust designation within the Pier 70 area and;
- The State Historic Preservation Office and the National Park Service will decide whether to list a Pier 70 historic district on the National Register of Historic Places;
- The Port Commission will approve any amendments to the Waterfront Land Use Plan;
- The Planning Commission and the Board of Supervisors will approve any required zoning changes;
- The Board of Supervisors will approve any Pier 70 property tax increment financing from an *Infrastructure Financing District* (California Government Code Section 53395 et seq.) to fund public improvements to Pier 70;
- The Port Commission will approve all leases and development agreements;

- Under current law, the Board of Supervisors will approve any non-maritime Pier 70 lease exceeding ten years or a million dollars;
- The Bay Conservation and Development Commission will issue a permit for shoreline access and improvement for the 100' shoreline band of Pier 70 along San Francisco Bay inside the premises of any proposed lease; and
- The State Historic Preservation Office and the National Park Service will approve the consistency of the project, where required, with the Secretary of the Interior's Standards for the Treatment of Historic Properties, for purposes of determining eligibility for federal historic tax credits.

F. Purpose of Proposed Changes

The purpose of the proposed changes to the San Francisco Charter is to provide the Port Commission, the Mayor and the Board of Supervisors with two additional tools to promote effective development and reuse of Pier 70 that is supported by the public, and which addresses and reconciles numerous regulatory, economic, maritime, historic preservation, open space and shoreline access issues. These tools include:

1. A method whereby the Board of Supervisors can approve a Pier 70 plan, in lieu of Charter Section 9.118 lease approvals, thereby increasing certainty in the development approval process and lowering risk capital premiums for the private equity that will be required to redevelop the site; and
2. A new financing tool for waterfront improvements such as maritime terminals, the remediation of environmental conditions, the seismic strengthening of structures, and the renovation of existing buildings or piers in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. If the Port Commission can demonstrate and the Board of Supervisors finds that lease revenues and property tax increment from Pier 70 are insufficient to fund public improvements, the Charter Amendment will allow General Fund financing of Pier 70 waterfront improvements not to exceed 75% of the Controller's and Tax Collector's projection of growth in payroll and hotel taxes accruing to the General Fund arising from the redevelopment of Pier 70.

These tools mirror strategies employed for successful waterfront redevelopment and historic rehabilitation projects in other locations. The Philadelphia Navy Yard is an apt example: Philadelphia and Pennsylvania adopted a broad range of investment incentives and tax exemptions to promote redevelopment of the Navy Yard, which includes a 167 acre National Register Historic District along 2.5 miles of the Delaware River.

The proposed Charter Amendment also includes technical amendments to the Charter that will alter the priorities for use of revenues in the Port's harbor trust fund (in anticipation of

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issuance of new Port revenue bonds as early as 2009) and that provide for a payment mechanism for certain interdepartmental agreements involving the Port Commission, subject to the approval of the Mayor and the Board of Supervisors.