

AMENDED IN COMMITTEE
12/09/2020

FILE NO. 201333

RESOLUTION NO. 584-20

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 Controller has agreed to provide the Board of Supervisors with a
4 “good faith” estimate of bond financing costs required by California Government Code Section
5 5852.2 prior to the issuance of the Bonds; and

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

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

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

23 The Controller’s Director of Public Finance (“Director”) is hereby authorized to cause
24 the sale of Bonds authorized under the terms of this resolution by negotiated sale pursuant to
25 one or more purchase contracts as the Director may negotiate with such underwriter selected

1 by the Director pursuant to competitive process. In the event of a negotiated sale of any series
2 of Bonds as provided hereunder, the underwriter's discount shall not exceed one percent
3 (1.0%) of the par amount thereof.

4 Section 3. Validation Proceedings. Each of the Mayor, Controller, Director and other
5 officers of the City, in consultation with the City Attorney, are hereby authorized, and any one
6 of the Authorized Officers is hereby directed, for and in the name of the City, to bring a
7 validation action under Section 860 of the California Code of Civil Procedure and this
8 Resolution to determine the legality and validity of the Bonds, any security document related
9 thereto and the proceedings authorized pursuant to this Resolution, and the City's bond
10 counsel is hereby authorized to file the complaint for such validation action on behalf of the
11 City, and to take further and appropriate actions in connection therewith.

12 Section 4. General Authority. The Mayor, Controller and the Director, and all other
13 appropriate officers, employees, representatives and agents of the City are hereby authorized
14 and directed to do everything necessary or desirable, in consultation with the City Attorney, to
15 provide for the issuance of the Bonds in accordance with the terms of this Resolution. Any
16 such actions are solely intended to further the purposes of this Resolution and are subject in
17 all respects to the terms of this Resolution, including the conditions for the issuance of the
18 Bonds as set forth in Section 2 above.

19 Section 5. This Resolution shall take effect immediately upon its adoption.
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21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Mark D. Blake
24 MARK D. BLAKE
25 Deputy City Attorney

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City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 201333

Date Passed: December 15, 2020

Resolution authorizing the issuance of a 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, as defined herein.

December 09, 2020 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 09, 2020 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 15, 2020 Board of Supervisors - ADOPTED

Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

File No. 201333

I hereby certify that the foregoing Resolution was ADOPTED on 12/15/2020 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

12.23.20

Date Approved