Resolution authorizing 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, as defined herein.

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

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

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

WHEREAS, 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 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; and

WHEREAS, The City argued 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; and

WHEREAS, The Superior Court ruled in favor of the City and held that Proposition C
was approved by the requisite voter approval threshold since it was put on the ballot by citizen
initiative, and 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; and

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

WHEREAS, On July 28, 2020, this Board of Supervisors 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 Proposition C is
struck down; and

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

WHEREAS, Given the court rulings in the City’s favor and the recent passage of
Proposition F, the Controller has determined to release funds in the Proposition C reserve
notwithstanding the fact that Complainants will seek review by the California Supreme Court; and
WHEREAS, For the purpose of refunding the City’s obligations evidenced by the
Judgment, the City has determined to issue its Judgment Obligation Bonds, Series 2021
(“Bonds”), in an aggregate principal amount not exceeding the sum of $995,000,000, with such
amount to be applied to (a) pay the Judgment Obligation (as defined below), including the
reimbursement of the City for any advances or interfund borrowings made to pay such
Judgment Obligation (as defined below) in anticipation of the issuance of the Bonds, (b) fund a
debt service or other similar reserve and (c) pay the costs of issuance of the Bonds (including
underwriter’s discount); and

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

WHEREAS, The Board of Supervisors has determined to authorize the issuance of City
and County of San Francisco Judgment Obligation Bonds, Series 2021 (or such other
designation determined by the Controller), in an aggregate principal amount not exceeding the
sum of $995,000,000, with such amount to be applied to (a) 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, (b) fund a debt service
or other similar reserve and (c) pay the costs of issuance of the Bonds (including underwriter’s
discount); and

WHEREAS, The issuance of the Bonds can be undertaken without a voter approval as
an obligation imposed by law in accordance with long-standing California Supreme Court
precedent City of Long Beach v. Lisenby, 180 Cal. 52 (1919) (holding that a tort judgment
does not create a prohibited debt notwithstanding the liability would be paid from a
subsequent fiscal year), although the City may determine to validate the matter under
California Civil Code Section 860 et seq.; and

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

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

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

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

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

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

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

Section 5. This Resolution shall take effect immediately upon its adoption.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: /s/ Mark D. Blake
MARK D. BLAKE
Deputy City Attorney
Resolution

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.

London N. Breed
Mayor

Angela Calvillo
Clerk of the Board

Date Approved

12.23.20