

## Assembly Bill No. 1423

### CHAPTER 526

An act to amend Sections 1 and 2 of Chapter 757 of the Statutes of 2012, relating to housing.

[Approved by Governor September 19, 2018. Filed with  
Secretary of State September 19, 2018.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1423, Chiu. Tidelands and submerged lands: City and County of San Francisco: seawall lots: affordable housing.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

Existing law, upon the State Lands Commission making specified findings, declares that certain seawall lots are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement, including seawall lot 322-1, and authorizes the port to lease these lots, subject to certain requirements and conditions.

Existing law authorizes the port to provide a rent credit or other waiver or deferral of rent in connection with a nontrust lease of seawall lot 322-1 that results in an effective rent to the port below fair market value, if the commission finds, among other things, that the nontrust lease is for affordable housing. Existing law imposes certain requirements on the port with regard to the construction of affordable housing on seawall lot 322-1. Existing law, for these purposes, defines the term “affordable housing” to mean housing for very low, low-, or moderate-income households, as defined.

This bill would revise the definition of “affordable housing” to mean, specifically for seawall lot 322-1, a structure that provides housing for persons and families of low or moderate income, as defined, persons and families from very low income households, as defined, or persons and families from extremely low income households, as defined. The bill would also specify that, specifically for seawall lot 3221-1, affordable housing may include other uses in the structure if those uses are incidental or ancillary to the primary purpose of providing affordable housing and are consistent with the public trust and the Burton Act trust, and if the port provides timely notification to the commission of those uses, except as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1 of Chapter 757 of the Statutes of 2012 is amended to read:

SECTION 1. For the purposes of this act the following terms have the following meanings:

(a) (1) “Affordable housing” means housing for very low, low-, or moderate-income households as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(2) For seawall lot 322-1 only, the term “affordable housing” means a structure that provides housing for persons and families of low or moderate income as that term is defined in Section 50093 of the Health and Safety Code, housing for persons and families from very low income households as defined in Section 50105 of the Health and Safety Code, or persons and families from extremely low income households as defined in Section 50106 of the Health and Safety Code.

(3) For seawall lot 322-1 only, the term “affordable housing” may include other uses in the structure, provided that both of the following apply:

(A) Those uses are incidental or ancillary to the primary purpose of providing housing for persons and families of low or moderate income, or are consistent with the public trust and the Burton Act trust.

(B) The port provides timely notification to the commission of those uses other than a childcare facility or a restaurant.

(b) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(c) “Burton Act transfer agreement” means that certain agreement dated January 24, 1969, between the state and the city, relating to the transfer of the Port of San Francisco from the state to the city, and any amendments to that agreement in accordance with its terms.

(d) “Burton Act trust” means the statutory trust imposed by the Burton Act, by which the state conveyed to the city, in trust and subject to certain terms, conditions, and reservations, the state’s interest in certain tidelands, including filled lands, and lands dedicated or acquired by the city as assets of the trust.

(e) “Chapter 660” means Chapter 660 of the Statutes of 2007, as amended.

(f) “City” means the City and County of San Francisco, a charter city and county, and includes the port.

(g) “Commission” means the State Lands Commission.

(h) “Designated seawall lot” or “designated seawall lots” means any or all of the parcels of real property situated in the city and commonly known as seawall lots 328, 330, 337, 347S, and 322-1, including a portion of Mission Rock Street, as shown on that certain map entitled “revised map of designated seawall lots,” which is reproduced in Section 9 of this act and is on file with the commission and the port.

(i) “Historic pier” means any pier, marginal wharf, pier shed, bulkhead building, and any other building or structure in the San Francisco waterfront between and including Pier 48 and Pier 45 that has been included in the

Port of San Francisco Embarcadero Historic District and that is either individually listed or eligible for listing on the National Register of Historic Places or has been designated as, or meets the standards for, resources contributing to the historic significance of the Port of San Francisco Embarcadero Historic District under federal law.

(j) “Historic structure” means any building, structure, or other facility, including a historic pier, that is located on port property and either is individually listed or eligible for listing on the National Register of Historic Places, or has been designated as, or meets the standards for, a resource contributing to the historic significance of a nationally registered historic district, the proposed Pier 70 Historic District, or a district eligible for listing as a historic district under federal law.

(k) “Lease” means a ground lease or space lease of real property, license agreement for use of real property, temporary easement, right-of-way agreement, development agreement, or any other agreement granting to any person any right to use, occupy, or improve real property under the jurisdiction of the port.

(l) “Nontrust lease” means a lease of all or any portion of the designated seawall lots free from the use requirements established by the public trust, the Burton Act trust, and the Burton Act transfer agreement.

(m) “Person” means an individual, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

(n) “Pier 70 area” means the Pier 70 area as defined in subdivision (s) of Section 1 of Chapter 477 of the Statutes of 2011.

(o) “Port of San Francisco” or “port” means the city acting by and through the San Francisco Port Commission.

(p) “Preservation” means the rehabilitation, restoration, or preservation of historic piers or other historic structures in accordance with the Secretary of Interior’s Standards for the Treatment of Historic Properties. Preservation includes seismic retrofitting, substructure repair, and other structural and life-safety improvements, provided that the improvement is necessary for, and in furtherance of, the preservation of historic piers or other historic structures.

(q) “Public trust” or “trust” means the common law public trust for commerce, navigation, and fisheries.

(r) “Seawall lot 322-1” means that parcel of real property situated in the city commonly known as seawall lot 322-1, as shown on that certain map entitled “revised map of designated seawall lots,” which is reproduced in Section 9 and is on file with the commission and the port.

(s) “Seawall lot 337” means that parcel of real property situated in the city commonly known as seawall lot 337, as shown on that certain map entitled “revised map of designated seawall lots,” which is reproduced in Section 9 of this act and is on file with the commission and the port.

(t) “Tidelands” means the lands lying below the elevation of ordinary high water, whether filled or unfilled, and includes submerged lands.

(u) “Transferable development rights” means transferable development rights as that term is defined in the city’s planning code, as may be amended from time to time.

SEC. 2. Section 2 of Chapter 757 of the Statutes of 2012 is amended to read:

SEC. 2. The Legislature finds and declares all of the following:

(a) The San Francisco waterfront is a valuable public trust asset of the state that provides special maritime, navigational, recreational, cultural, and historical benefits to the people of the region and the state.

(b) The lands comprising the San Francisco waterfront consist primarily of sovereign tidelands granted to the city by the state pursuant to the Burton Act. Under the city’s charter, the granted lands are held and managed by the port. The Burton Act authorizes the port to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust.

(c) A unique attribute of the port is the numerous historic maritime resources present on port property, many of which are in need of major structural repairs and are not currently available for the use and enjoyment of the public. The Legislature has previously found that rectifying the deteriorating conditions along the San Francisco waterfront, the preservation of the numerous historic piers and other historic structures on port land, and the construction of waterfront plazas and open space, are matters of statewide importance that will further the purposes of the public trust and the Burton Act trust. The Legislature has also found that revitalization of the Pier 70 area and the restoration of its unique collection of historic maritime industrial buildings is of particular importance. As the port strives to make productive use of the Pier 70 area and other lands under its jurisdiction, it faces numerous obstacles related to the high costs of waterfront development, including costs associated with seismic safety improvements, historic rehabilitation, hazardous materials remediation, and providing public access to the waterfront. The success of the port’s efforts to revitalize the waterfront depends in part on strategies for increasing revenues from port lands and for reducing the costs of beneficial development projects.

(d) The seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall (now occupied by the Embarcadero roadway) in the late 19th and early 20th centuries. Over time, certain of the seawall lots or portions thereof, including the designated seawall lots, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust. The designated seawall lots are presently either vacant or leased on an interim basis, primarily for commuter parking.

(e) The Legislature, in Chapter 660, found that most of the designated seawall lots are no longer necessary for the purposes of the public trust or Burton Act trust. The Legislature also found that future revenues from the development and leasing of the designated seawall lots are an essential source of funds to preserve the port’s numerous historic piers and historic

structures, construct and maintain waterfront plazas and open space, and improve public access to the waterfront. Chapter 660 lifted the use restrictions of the public trust and Burton Act trust from those designated seawall lots and authorized the port to enter into nontrust leases of the lands, subject to certain conditions, and subject to the requirement that the lease revenues be used for specified trust purposes.

(f) Seawall lot 322-1 is presently used for surface parking primarily serving commuters. The lot was not included in Chapter 660, but like the other designated seawall lots, seawall lot 322-1 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, is cut off from the water, constitutes a relatively small portion of the tidelands granted to the city, is not currently being used, and is not anticipated in the foreseeable future to be used, for public trust or Burton Act trust purposes. It is the intent of the Legislature that, conditioned on the approval by the commission, seawall lot 322-1 be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement in the same manner and subject to the same requirements as the designated seawall lots under Chapter 660, subject to the additional provisions of this act.

(g) The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life in California, and is a matter of statewide concern. The Legislature has previously found that attainment of the state's housing goals requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels. The Legislature has also found that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government, and that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provisions for the housing needs of all economic segments of the community. The Legislature has also recognized that local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

(h) Some of the port's designated seawall lots, including seawall lot 322-1 and portions of seawall lot 337, are well-suited to support infill affordable housing development. Development of affordable housing typically requires a ground lease at rents that are below market. However, Chapter 660 requires the port to receive fair market value for nontrust leases of designated seawall lots.

(i) The city has implemented a number of local programs designed to encourage the development of affordable housing, including programs that impose fees, exactions, or other obligations on new development. For example, the city's jobs-housing linkage program imposes fees on most types of commercial development to offset the demand for affordable housing generated by new employment.

(j) Private commercial development on port property is subject to the city's jobs-housing linkage program fees. These fees increase the already

high costs associated with development and revitalization of port property. The project development costs for port property would be reduced if the jobs-housing linkage fees that would otherwise be imposed on development projects on port property could be reduced or waived in exchange for an equivalent amount of rent credits or similar incentives provided by the port to encourage affordable housing development on other port property.

(k) A purpose of this act is to reduce the costs associated with development that will revitalize the waterfront, facilitate the preservation of historic piers and structures, and benefit the public trust, while also encouraging affordable housing development on port lands no longer needed for trust purposes, by authorizing the port, subject to commission approval, to grant rent credits or similar incentives for affordable housing development on seawall lot 322-1 and portions of seawall lot 337, provided the port can apply those credits to reduce the affordable housing fees or other obligations imposed on development within the Pier 70 area or on seawall lot 337, and subject to the conditions set forth in this act.

(l) Seawall lot 322-1 is located in the city's Northeast Waterfront Historic District. This act includes conditions to ensure that any development of seawall lot 322-1 for nontrust use is compatible with the historic and architectural maritime character of the district.

(m) The preservation of the port's historic piers and other historic structures is critical for the preservation of the city's rich maritime history, furthers trust purposes, and is of statewide benefit. The city has adopted programs to encourage the preservation of historic resources, including a transferable development rights program. This act amends the Burton Act to clarify that the port may transfer transferable development rights to preserve historic piers and structures on port property, to the extent authorized under local law and subject to certain limitations.